RAMESH BIRCH & ORS. ETC. A

v.

UNION OF INDIA & ORS. ETC.

APRIL 21, 1989

[SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.] B

Punjab Reorganisation Act, 1966: s. 87—Power to extend enactments to Union Territory of Chandigarh—Delegation of to the Executive—Validity of—Held, not a case of abdication or effacement of legislative power—Contains sufficient declaration of guideline—Power to extend future laws and amendments necessary corollary. C

East Punjab Urban Rent Restriction (Amendment) Act 1985—Extension of to Union Territory of Chandigarh by Central Government Notification dated December 15, 1986—Validity of.

D

Constitution of India, Article 246(4)—Executive—Power of adaptation by extension of laws to Union Territory of Chandigarh by notification—Constitutional validity of.

Administrative Law: Central Government Notification dated December 15, 1986—Extension of East Punjab Urban Rent Restriction (Amendment) Act, 1985 to Union Territory of Chandigarh—Nature and scope of—Whether suffers from vice of impermissible delegation. E

Section 87 of the Punjab Reorganisation Act, 1966 empowered the Central Government to extend, with such restrictions and modifications as it thought fit, to the Union Territory of Chandigarh any enactment which was in force in a State at the date of the notification. Section 89 provided for adaptation and modification by the appropriate Government of any law made before the appointed day, whether by way of repeal or amendment, for application in relation to the State of Punjab or Haryana or to the Union Territory of Himachal Pradesh or Chandigarh before the expiration of two years. The State of Punjab, of which the Union Territory of Chandigarh originally formed part, was then governed by the East Punjab Urban Rent Restriction Act, 1949. Section 2(j) of that Act defined 'urban area' as any area administered by a municipal committee, a cantonment board, a town committee, or a notified area committee or any area declared by the State Government by notification to be an urban area for the purposes of the Act. F G H

A The Central Government had issued under s. 89 of the Reorganisation Act, the Punjab Reorganisation (Chandigarh) (Adaptation of Laws on State and Concurrent Subjects) Order, 1968 with effect from 1st November, 1966 Paragraph 4 of which directed that in all the existing laws, in its application to the Union Territory of Chandigarh, any reference to the State of Punjab should be read as a reference to the B Union Territory of Chandigarh. In exercise of the power conferred by s. 2(j) of the Rent Act, the Central Government had also issued on 13th October, 1972 a notification declaring the area comprising Chandigarh to be an "urban area" for the purpose of that Act.

This notification was, however, quashed by the High Court in C *Harkishan Singh* v. *Union,* AIR 1975 P & H 160, on the ground that no notification had been issued prior to 1st November, 1966 under s. 2(j) declaring Chandigarh to be an urban area, and there was no notification under s. 87 making the 1949 Act operative in Chandigarh with the necessary adaptation. Thereupon, Parliament enacted the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974. Section 3 D of that Act extended to Chandigarh the 1949 Act subject to modifications specified in the schedule with retrospective effect from 4th November, 1972 with a view to regularies all proceedings for eviction which might have been initiated during the interregnum. These included a modification of the definition of 'urban areas' as including the area comprising Chandigarh, as defined in s. 2 of the Capital of E Punjab (Development Regulation) Act, 1952, and such other areas comprised in the Union Territory of Chandigarh as the Central Government may by notification declare to be urban for the purposes of the Act.

In 1982 Parliament passed the East Punjab Urban Rent Restric- F tion (Chandigarh Amendment) Act, 1982 effecting certain amendments in the 1949 Act in its application to Chandigarh.

In 1985 the Legislature of the State of Punjab enacted East Punjab Urban Rent Restriction (Amendment) Act, 1985 to make the 1949 Act more effective. This amendment came into force with effect G from 16th November, 1985.

By a notification dated 15th December, 1986 purportedly in exercise of its power under s. 87 of the Reorganisation Act the Central Government extended to the Union Territory of Chandigarh the provisions of the 1985 Act as in force in the State of Punjab at the date of the H notification and subject to the modifications mentioned therein, with

the result that while the provisions of the 1949 Act had been brought into force with effect from 4th November, 1972 by the Act of Parliament, the provisions of the 1985 Act had been extended to the said territory by means of a Notification of the Central Government issued under s. 87. The High Court upheld the validity of the said notification. A

In these appeals by special leave and the writ petitions it was contended for the appellants/petitioners that in the purported exercise of its power under Article 246(4) of the Constitution, the Parliament could not delegate its legislative function in favour of an executive authority to such an extent as to amount to an abdication of its legislative function; that by enacting s. 87, Parliament instead of legislating for the Union Territory had left it to the Central Government to decide for all time to come what should be the law in force in that Territory; whereas s. 89 gives a limited transitory power to the Central Government to adapt existing laws within a period of two years; that such adaptation could hold the field only until they were altered, repealed or amended by a competent legislature or authority; that s. 87 confers on the executive government a wide power of choice, for application to Chandigarh, of not only one legislative enactment on any subject in operation in various parts of the country but also groups of provisions from one or more of them and thus enforce a law which would be an amalgam of various statutory provisions; that there was no legislative guidance as to the manner in which these choices should be exercised by the executive; that s. 87 enables extension by Government notification even of any legislation which might have come into force in any part of India at any time between 1966 and the date of the notification; that the effect, therefore, of s. 87 could be that the entire legislation for the Union Territory in respect of any particular subject would entirely depend upon the fancy of the Central Government without any sort of legislative or parliamentary application of mind; that a power to exercise such wide power could not be described as a ministerial power, it is essential legislative power; that these facets of s. 87 clearly render it an instance of excessive delegation by Parliament to executive amounting in effect, to the total abdication of its legislative powers in regard to Chandigarh. B C D E F

It was further contended that s. 87, on its proper construction, permits the extension of the laws of another State to Chandigarh only so long as there is a vacuum of laws on any particular subject; that once Parliament itself steps in and assumes legislative responsibilities in respect of that subject, a transplantation of laws from elsewhere by extension is neither necessary nor valid; that as early as 1974 Parliament having applied its mind and legislated in respect of landlord- G H

A tenant matters for the Union Territory, it was for Parliament and Parliament alone to legislate on the subject thereafter; that by purporting to extend by an executive notification under s. 87 the provisions of the 1985 Act to Chandigarh what the Central Government had really done was to modify or amend an existing parliamentary law operating already in the State, which was impermissible, and that the notification B dated 15th December, 1986 having thus exceeded the purview of s. 87 it was, therefore, *ultra vires*.

Dismissing the appeals and the writ petitions,

HELD: 1.1 Section 87 of the Punjab Reorganisation Act, 1966 C should be interpreted constructively so as to permit its object being achieved rather than in a manner that will detract from its efficacy or purpose. So construed, its validity has to be upheld. [683C]

1.2 It is impossible to carry on the government of a modern State with its infinite complexities and ramifications without a large devolution of power and delegation of authority. While Parliament should, D therefore, have ample and extensive powers of legislation, these should include a power to entrust some of those functions and powers to another body or authority. Such entrustment, however, could not be so extensive as to amount to abdication or effacement. The legislatures cannot wash their hands off their essential legislative function of laying down the legislative policy with sufficient clearness and enunciating the E standards which are to be enacted into a rule of law. This function cannot be delegated. What can be delegated is only the task of subordinate legislation which is by its very nature ancillary to the statute which delegates the power to make it and which must be within the policy and framework of the guidance provided by the legislature. [668G-H; 669C-D] F

1.3 Section 87 of the Reorganisation Act did not cross the line beyond which delegation amounts to abdication and self-effacement. It was not the power to make laws that was delegated. The provision only conferred a power on the executive to determine, having regard to the local conditions prevalent in the Union Territory, which one of several G laws, all approved by one or the other of the legislatures in the country, would be the most suited to Chandigarh. The power given as such was more in the nature of ministerial than in the nature of legislative power because all that the Government had to do was to study the laws and make selection out of them. Thus viewed, it was not really an unguided and arbitrary power. [675F-G]

H

In re Delhi Laws Act, [1951] SCR 747 applied. A

Registrar of Cooperative Societies v. *Kunhambu* [1980] 2 S.C.R. 260; *R.* v. *Burah,* [1878] 5 I.A. 178; *Jatindra Nath Gupta* v. *The Province of Bihar & Ors.,* [1949] FCR 595; *Harishankar Bagla & Anr.* v. *The State of Madhya Pradesh,* [1955] 1 SCR 380; *Rajnarain Singh* v. *The Chairman, Patna Administration Committee, Patna & Anr.,* [1955] B 1 SCR 290; *Sardar Inder Singh* v. *The State of Rajasthan,* [1957] SCR 605; *Pandit Banarsi Das* v. *The State of Madhya Pradesh & Ors.,* [1959] SCR 427; *The Edward Mills Co. Ltd. Beawar* v. *The State of Ajmer,* [1955] 1 SCR 735; *The Western India Theatres Ltd.* v. *Municipal Corporation of the City of Poona,* [1959] 2 Supp. SCR 71; *Hamdard Dawakhana (Wakf) Lal Kuan* v. *Union of India,* [1960] 2 SCR 671; C *Vasantlal Maganbhai Sanjanwala* v. *The State of Bombay & Ors.,* [1961] 1 SCR 341; *Jyoti Pershad* v. *Administrator for the Union Territory of Delhi,* [1962] 2 SCR 125; *Shama Rao* v. *The Union Territory of Pondichery,* [1967] 2 SCR 650; *Mohammad Hussain Gulam Mohammad & Anr.* v. *The State of Bombay & Anr.* [1962] 2 SCR 659; *Corporation of Calcutta & Anr.* v. *Liberty Cinema,* [1965] 2 SCR 477, D *Devi Das Gopal Krishan & Ors.* v. *State of Punjab & Ors.,* [1967] 3 SCR 557; *Municipal Corporation of Delhi* v. *Birla Cotton, Spinning & Weaving Mills, Delhi & Anr.,* [1968] 3 SCR 251; *Sita Ram Bishambhar Dayal* v. *State of U.P. & Ors.,* [1972] 2 SCR 141; *Hira Lal Rattan Lal etc. etc.* v. *State of U.P. & Anr. etc. etc.,* [1973] 2 SCR 502; *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd.* v. *The Asstt. Commissioner of Sales* E *Tax & Ors.,* [1974] 2 SCR 879; *M.K. Papiah & Sons.* v. *The Excise Commissioner & Anr.,* [1975] 3 SCR 607; *Brij Sundar Kapoor* v. *First Additional District Judges,* [1980] 1 SCC 651 and *Sprigg.* v. *Sigcau,* [1897] AC 238, referred to.

F

2.1 Section 87 was quite valid even on the policy and guidelines theory. It is not necessary that the legislature should "dot all the i's and cross all the t's" of its policy. It is sufficient if it gives the broadest indication of a general policy of the legislature. [673E-F]

2.2 The policy behind s. 87 seems to be that it was necessitated by G **changes resulting in territories coming under the legislative jurisdiction of the Centre. These were territories situated in the midst of contiguous territories which had a proper legislature. They were small territories falling under the legislative jurisdiction of Parliament, which had hardly sufficient time to look after the details of all their legislative needs and requirements. To require or expect Parliament to legislate** H

A for them would have entailed a disproportionate pressure on its legislative schedule. It would also have meant the unnecessary utilisation of the time of a large number of members of Parliament for, except the few members returned to Parliament from the Union Territory none else was likely to be interested in such legislation. In such a situation the most convenient course of legislating for them was the adaptation by B extension of laws in force in other areas of the country. [673F; 674A-B]

2.3 There could have been no objection to the legislation if it had provided that the laws of one of the contiguous States should be extended to Chandigarh. But such a provision would have been totally inadequate to meet the situation for two reasons. There might have been more than one law in force on a subject in the contiguous States— C say one in Punjab, one in PEPSU and one in Himachal Pradesh etc.— and Parliament was anxious that Chandigarh should have the benefit of that one of them which would most adequately have met the needs of the situation in that territory. Or, again, there might have been no existing law on a particular subject in any of the contiguous areas which was D why the power had to include the power of extending the laws of any State of India. While in a very strict sense this might have involved a choice, it was in fact, and in general run of cases, only a decision on suitability for adaptation rather than choice of a policy. It was a delegation not of policy, but of matters of detail for a meticulous appraisal of which Parliament had no time. Even if it be assumed that this involved E a choice of policy, the restriction of such policy to one that was approved by Parliament or a State Legislature constituted a sufficient declaration of guideline within the meaning of the "policy-guideline theory." [675G-H; 676A-C]

In re Delhi Laws Act, [1951] SCR 747 referred to.

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3. Once it is held that the delegation of a power to extend a present existing law is justified, a power to extend future laws is a necessary corollary. If Parliament had no time to apply its mind to the existing law initially to be adapted, it could have hardly found time to consider the amendments from time to time engrafted on it in the State G of its origin. It would then seem only natural as a necessary corollary that the executive should be permitted to extend future amendments to those laws as well. [676D-E]

In re Delhi Laws Act, [1951] SCR 747 referred to.

4.1 The concept of vacuum is as much relevant to a case where H there is absence of a particular provision in an existing law as to a case

where there is no existing law at all in the Union Territory on a subject. For instance, if Parliament had not enacted the 1974 Act but had only enacted an extension of the Transfer of Property Act to Chandigarh, it could not have been said that a subsequent notification cannot extend the provisions of the 1949 Act to Chandigarh simply because the subject of leases was governed by the Transfer of Property Act, which had been already extended and there, was, therefore, no "vacuum" left which could be filled in by such extension. Again, suppose, initially, a Rent Act was extended by Parliament which did not contain a provision regarding one of the grounds on which a landlord could seek eviction—say, one enabling the owner to get back his house for reoccupation—and then the Government thought that another enactment containing such a provision also be extended, it could not perhaps be said that the latter was a matter on which there was no legislation enacted in the Territory and that the extension of the latter enactment only filled up a void or vacancy. Again, suppose the provisions of a general code like, say, the Code of Civil Procedure were extended to the Union Territory. In that case s.87 could not be construed so as to preclude the extension of a later amendment to one of the rules to one of the orders of the C.P.C. merely on the ground that it will have the effect of varying or amending an existing law. There is no warrant to thus unduly restrict the scope of a provision like s. 87. [682D-H]

4.2 The extension of an enactment which makes additions to the existing law would thus also be permissible under s. 87 of the Reorganisation Act, so long as it does not, expressly or impliedly repeal or conflict with, or is not repugnant to, an already existing law. [683A-B]

In the instant case, the extension of the East Punjab Urban Rent Restriction (Amendment) Act, 1985 to the Union Territory of Chandigarh only added provisions in respect of aspects not covered by the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974 and in a manner not inconsistant therewith. [683F]

Lachmi Narain v. *Union of India,* [1976] 2 SCR 795 and *Hari Shankar Bagla* v. *State of Madhya Pradesh,* [1955] 1 SCR 380 referred to.

5. A notification while extending a law can make only such modifications and restrictions in the law extended as are of an incidental, ancillary or subservient nature and as do not involve substantial deviations therefrom. In the instant case, the 1985 Act has been extended as

it is, with only very minor modifications. The notification dated 15th December, 1986 was, therefore, quite valid and not liable to be struck down. [684E-F]

Lachmi Narain v. *Union of India,* [1976] 2 SCR 785; **referred to and** *Kewal Singh* v. *Lajwanti,* [1980] 1 SCR 854; **distinguished.**

6. Any addition, however, small does amend or vary the existing law but so long as it does not really detract from or conflict with it, there is no reason why it should not stand alongside the existing law. In the instant case the modifications introduced by the 1985 Act in the 1949 Act, as were reenacted by the 1974 Act were minor modifications and restrictions. They do not incorporate substantial changes in the scheme of the pre-existing law. Both sets of provisions can stand together and effectively supplement each other. [684F, H]

Hari Shankar Bagla v. *State of Madhya Pradesh,* [1955] 1 SCR 380 **and** *Lachmi Narain* v. *Union of India,* [1976] 2 SCR 795 **referred to.**

7. There is a very crucial difference between s. 87 and 89 in as much as within the period of two years mentioned in s. 89, the Central Government could while adapting pre-existing laws make any changes by way of repeal or amendment. But s. 87, though capable of enforcement indefinitely, confers a more limited power. It can be invoked only to extend laws, already in existence, to the Union Territory and cannot make any substantial changes therein. The power under s. 89 is limited in time but extensive in scope, while under s. 87 the power is indefinite in point of duration but very much more restricted in its scope. Therefore, resort to s. 87 did not render s. 89 redundant. [686E-F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2448 of 1989 etc.

From the Judgment and Order dated 25.5.1988 of the Punjab and Haryana High Court in C.W.P. No. 736 of 1987.

G. Ramaswamy, Additional Solicitor General, Harbhawan Walia, Kapil Sibal, M.S. Gujral, Anil Dev Singh, M.R. Sharma, D.V. Sehgal, Naresh Bakshi, R. Bana, Jitendra Sharma, S.M. Sarin, S.K. Mehta, D. Mehta, Atul Nanda, P.N. Puri, B.B. Sawhney, M.C. Dhingra, A.K. Gupta, T.C. Sharma, Mrs. Sushma Suri, Ms. Indu Goswami, R.S. Yadav, Manoj Prasad, Manoj Swarup M.L. Verma, S. Bagga, D.S. Gupta, B.R. Kapur, Anis Ahmad Khan, S. Sehgal and

N.K. Aggarwal for the appearing parties. A

The Judgment of the Court was delivered by

RANGANATHAN, J. This is a batch of appeals and writ petitions challenging the validity of a notification issued on 15.12.1986 by the Central Government under section 87 of the Punjab Reorganisation Act (Act of Parliament No. 31 of 1966), hereinafter referred to as 'the Reorganisation Act'. By this notification, the Central Government purported to extend to the Union Territory of Chandigarh—hereinafter referred to also as 'Chandigarh'—the provisions of the East Punjab Urban Rent Restriction (Amendment) Act, 1985 (Punjab Act 2 of 1985) (hereinafter referred to as 'the 1985 Act'), as it was in force in the State of Punjab at the date of the notification and subject to the modifications mentioned in the said notification. The Punjab and Haryana High Court by its judgment in *Ramesh Birch* v. *Union*, AIR 1988 P & H 281 upheld the validity of the above notification and hence the special leave petitions. The writ petitions have been directly filed in this Court challenging the validity of the notification. In view of the importance of the question involved, we have heard the parties on the merits of the cases. We, therefore, grant special leave in the special leave petitions and *rule nisi* in the writ petitions and proceed to dispose of the appeals and the writ petitions by this common judgment. B C D E

Section 87 of the Reorganisation Act is in the following terms:

> "87. *Power to extend enactment to Chandigarh*—The Central Government may, by notification in the Official Gazette, extend with such restrictions or modifications as it thinks fit, to the Union Territory of Chandigarh any enactment which is in force in a State at the date of the notification." F

There are other provisions of this Act which will be referred to later. But it is necessary to refer to s. 87 here for a specific purpose and that is to point out that the provisions of section 87 are *pari materia* with the provisions of Section 7 of the Dehi Laws Act, 1912 and Section 2 of the Ajmer Marwara (Extension of Laws) Act, 1947, which, for convenience, we shall refer to as Act I and Act II respectively. These provisions read as follows: G

> "*Section 7 of Act I:* The Provincial Government may, by H

A notification in the Official Gazette, extend with such restrictions and modifications as it thinks fit, to the Province of Delhi or any part thereof, any enactment which is in force in any part of British India at the date of such notification."

B "*Section 2 of Act II:* The Central Government may, by notification in the official Gazette, extend to the province of Ajmer Marwara with such restrictions and modifications as it thinks fit any enactment which is in force in any other province at the date of such notification."

C It is also necessary here to contrast the above two provisions with section 2 of the Part C States (Laws) Act, 1950 (hereinafter referred to, for purposes of convenience, as Act III). That provision reads as follows:

"*Section 2 of Act III:* The Central Government may, by
D notification in the official Gazette, extend to any Part C State (other than Coorg and the Amendment and Nicobar Islands) or any part of such State, with such restrictions and modifications as it thinks fit, any enactment which is in force in a Part A State at the date of the notification *and provision may be made in any enactment so extended for the*
E *repeal or amendment of any corresponding law (other than a Central Act) which is for the time being applicable to that Part C State.*"

The reference to these provisions is being made at this stage because the validity of section 7 of the Delhi Laws Act, 1912 and
F section 2 of Ajmer Marwara (Extension of Laws) Act 1947 were upheld by this court in the decision reported as *In re Delhi Laws Act*, [1951] S.C.R. 747. The decision also upheld the validity of the first part of section 2 of Act III but struck down the second part of that provision (underlined above) as vitiated by the vice of excessive delegation. A good deal of the arguments addressed before us naturally
G turned on the ratio and effect of the decision of this Court in the *Delhi Laws Act* case (supra), but, before turning to the arguments, it is necessary to give a brief history of s. 87, the interpretation of which is presently in question.

When the Constitution of India came into force on 26th January,
H 1950, the component units of the Indian Union were grouped into four

types of territories. There were nine States in Part A (one of which was Punjab, earlier known as East Punjab), nine States in Part B (which included Pepsu), ten States in Part C (which included Himachal Pradesh) and only one State, namely, Andaman and Nicobar Islands, in Part D. At this stage, although several of the former Indian States had acceded to the Indian Union, the process of their integration as component units of the Indian Union was not complete. Some units were accepted as units of the Union in the form in which they existed at the time of independence while some were formed by grouping together one or more of the former princely States. After the recommendations of the States Reorganisation Commission in 1955, the Constitution was amended to classify the units of the Indian Union into States and Union Territories.

At the time of the 1956 reorganisation one State of Punjab was created by merging the erstwhile States of Pepsu and Punjab. In 1966 a new State of Haryana was created by carying out certain territories from the State of Punjab. Certain hill areas of the Punjab were merged with the adjoining Union Territory of Himachal Pradesh. A new Union Territory of Chandigarh was carved out which became the joint capital of Punjab and Haryana. The Punjab Reorganisation Act, 1966 gave effect to these proposals. Sections 3 and 4 dealt with the delimitation of the territories of the States of Punjab and Haryana and the Union Territories of Himachal Pradesh and Chandigarh. One of the important aspects of the reorganisation, in respect of which specific statutory provision was needed, was regarding the applicability of laws to the various territories which underwent reoganisation. This was effected by Part X of the Reorganisation Act comprising of sections 86 to 97. It is however sufficient for our present purposes to refer to the provisions contained in sections 87 to 90. These provisions were in the following terms:

> *Section 87: Power to extend enactments to Chandigarh*— As set out earlier.
>
> *Section 88:* Territorial extent of laws— The Provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Punjab shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within the State immediately before the appointed day.

A *Section 89:* Power to adapt laws— For the purpose of facilitating the application in relation to the State of Punjab or Haryana or to the Union territory of Himachal Pradesh or Chandigarh of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations
B and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

C

Section 90: Power to construe laws— (1) Notwithstanding that no provision or insufficient provision has been made under section 89 for the adaptation of a law made before the appointed day, any court, tribunal or authority, required or empowered to enforce such law may, for the
D purpose of facilitating its application in relation to the State of Punjab or Haryana, or to the Union of territory of Himachal Pradesh or Chandigarh construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the court, tribunal or authority.

E

(2) Any reference to the High Court of Punjab in any law shall, unless the context otherwise requires, be construed, on and from the appointed day, as a reference to the High Court of Punjab and Haryana.

F The dispute in this batch of cases is regarding the applicability of certain rent laws to the Union Territory of Chandigarh. The territories originally comprised in the former Province of East Punjab—later designated as the State of Punjab—were governed by the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'principal Act' or the '1949 Act'). This Act applied to all urban areas in
G the State of Punjab. Section 2(j) of that Act defined 'urban area' as any area administered by a municipal committee, a cantonment board, a town committee or a notified area committee or any area declared *by the State Government by notification to be an urban area for the purposes of the Act.* The Central Government had earlier issued, under section 89, the Punjab Reorganisation (Chandigarh) (Adapta-
H tion of Laws on State and Concurrent Subjects) Order, 1968 w.e.f.

1.11.66. Paragraph 4 of the Order directed that in all the existing laws, in its application to the Union Territory of Chandigarh, any reference to the State of Punjab should be read as a reference to the Union Territory of Chandigarh and para 2(1)(b) of the Order defined the expression 'existing law'. The Central Government, in exercise of the power conferred by section 2(j) of the principal Act, issued on 13.10.72 a notification declaring the area comprising Chandigarh to be an 'urban area' for the purposes of the principal Act. The notification was published in the Gazette of India on 4.11.72. This notification was however quashed by the Punjab & Haryana High Court by its decision in the case of *Harkishan Singh* v. *Union,* AIR 1975 P & H 160. That was on the short ground that, as no notification had been issued prior to 1.11.66 under s. 2(j) declaring Chandigarh to be an urban area, the Act could not be said to have been in force within the said area prior to 1.11.66. Neither s. 88 not the notification of 13.10.72 could, it was held, be effective to make the principal Act operative in Chandigarh unless it had first been applied to the Union Territory of Chandigarh or any part thereof by a notification under s. 87 with the necessary adaptation. This decision, of a Full Bench of the High Court, was rendered on 9.10.1974.

Two courses were open to the Government to set right the lacuna pointed out by the High Court. The first, as pointed out by the Full Bench, was to extend the principal Act to Chandigarh by a notification under s. 87. The second was to invoke the legislative powers of Parliament available in respect of Chandigarh under article 246(4) of the Constitution to enact a legislation for this purpose. But it was important that any corrective measure had to be made retrospective in its operation if the large number of suits for eviction that had been filed in the meanwhile on the strength of the notification and were pending disposal in various courts were to be saved from being rendered non-maintainable consequent on the decision of the High Court. Presumably for this reason, the second of the above courses was adopted and Parliament enacted the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act (Central Act 54 of 1974) hereinafter referred to as 'the 1974 Act'. Section 3 of this Act provided for the enforcement of the principal Act in Chandigarh. It reads:

> "*Section 3: Extension of East Punjab Act III of 1949 to Chandigarh*—
>
> Notwithstanding anything contained in any judgment, decree or order of any court, the Act shall, subject to the

A modifications specified in the Schedule, be in force in, *and be deemed to have been in force with effect from 4th day of November, 1972* in the Union Territory of Chandigarh, as if the provisions of the Act so modified had been included in and formed part of this section and as if this section had been in force at all material times."

B

Three features of the above legislation may be emphasised at this stage. The first was that, though this purported to extend the principal Act to Chandigarh, it was in truth and substance a Parliamentary enactment applicable to Chandigarh incorporating within itself by reference, for purposes of convenience and to avoid repetition, all the provisions of the principal Act. The second was that the Act was given C retrospective effect from 4.11.72, the date on which the previous notification under section 89 had been gazetted with a view to regularise all proceedings for eviction which might have been initiated during the interregnum. Thirdly, the principal Act was re-enacted subject to the modifications specified in the Schedule. These included a D modification of the definition of 'urban area' as including the area comprising Chandigarh as defined insection 2 of the Capital of Punjab (Development Regulation) Act, 1952 and such other areas comprised in the Union Territory of Chandigarh as the Central Government may by notification declare to be urban for the purposes of the Act.

E Before turning to the issues before us, it is necessary to refer to three subsequent developments:

(i) In 1976, when Parliament was not in session, the President of India promulgated Ordinance 14 of 1976 on 17.12.76. By this Ordinance, the 1949 Act, as in force in Chandigarh, was F amended in the following respects:

(a) In section 13, an exlanation and sub-section (4A) were introduced;

(b) New sections 13A, 18A and 18B were inserted;

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(c) A new sub-section (2A) in section 19 was inserted;

(d) A Schedule II prescribing the form of summons to be issued in proceedings under the newly inserted s. 13A was added. This ordinance was allowed to lapse and was not enacted into law H thereafter.

(ii) In 1982, Parliament passed the East Punjab Rent Restriction (Chandigarh Amendment) Act (No. 42) of 1983 (hereinafter referred to as 'the 1982 Act'). By this Act, two amendments were effected to the principal Act in its application to Chandigarh. One was a formal one replacing reference to "East Punjab" by a reference to "Punjab". The second was the substitution of a new definition of "non-residential building" in s. 2(d) of the Act. This amendment Act did not, however, incorporate the amendments earlier effected in the principal Act (as in force in Chandigarh) by the Ordinance of 1976 which had lapsed, though this opportunity could have been availed of by Parliament had it been so minded, to introduce those amendments as well.

(iii) In 1985, the provisions of the principal Act were amended in their application to the State of Punjab. The legislature of the State of punjab enacted Punjab Act 2 of 1985 (hereinafter referred to as 'the 1985 Act') by which the principal Act was amended to insert therein new sections 13A, 18A and 18B and a new Second Schedule and to make certain amendments in sections 13 and 19 of the Act. These amendments were substantially the same as those that had been effected by the Ordinance of 1976 except that a new definition of "specified landlord" was added in s. 2 and the other provisions verbally altered in consequence. This amendment came into force w.e.f. 16.11.1985.

When the last of the above developments took place, the Central Government considered it necessary to extend the 1985 Act to the territory of Chandigarh. In order to effectuate this object, it issued a notification dated 15.12.86 purportedly in exercise of its powers under section 87 of the Reorganisation Act. By this notification the Central Government extended to the Union Territory of Chandigarh the provisions of the 1985 Act as in force in the State of Punjab at the date of the notification (i.e. to say as on 15.12.1986) and subject to the modifications mentioned therein. The resultant position is that while the provisions of the principal Act had been brought into force in the Union Territory of Chandigarh w.e.f. 4.11.72 by an Act of Parliament, the provisions of the 1985 Act have been extended to the territory of Chandigarh by means of a notification of the Central Government issued under s. 87. The short question posed before us is whether the latter "extension" is permissible and valid in law.

Ex facie, the impugned notification appears to be *intra vires* s. 87. The 1985 Act is an enactment in force in a State on the date of the notification and s. 87 clearly permits the Central Government to extend it to Chandigarh. If the petitioners/appellants seek to challenge its validity, they have either to contend that s. 87 itself is *ultra vires* the Constitution or that, though s. 87 is a valid provision, on a proper construction thereof, the notification travels beyond the area of extension permitted under it and is hence invalid. Both these contentions have been urged before us. Sri Gujral had so much confidence in the latter argument that he had made it his principal argument, taking up the former as a plea in the alternative. But young Sri Swarup boldly concentrated on attacking the validity of s. 87 while also lending support to Sri Gujral's principal argument as an argument in the alternative. We shall proceed to examine these two contentions.

The argument contesting the validity of s. 87 proceeds on the following lines. The main premise of the argument is that, under Article 246(4) of the Constitution, Parliament has exclusive power to make laws on matters enumerated in the State List and Concurrent List (i.e. List II and List III of the Seventh Schedule to the Constitution) in respect of a Union Territory except where (as in the case, say, of Pondicherry) the territory has a legislative assembly, in which event the power will vest in such assembly under s. 18 of the Government of Union Territories Act (18 of 1963). There being no legislative assembly set up for Chandigarh, Parliament and Parliament alone has any legislative power with regard to that territory. This power, however, plenary and extensive, cannot be self effacing. In purported exercise of such power, Parliament cannot delegate its legislative function in favour of an executive authority to such an extent as to amount to an "abdication" of such legislative function. The argument is that this is exactly what has been done under s. 87. By enacting s. 87, Parliament, instead of legislating for the Union Territory, has left it to the Central Government to decide for all time to come what should be the laws in force in that territory. This, it is said, is clear from the extraordinary ambit of the powers conferred by s. 87 on the Central Government in three important directions:

(i) S. 87 is not transitional in nature but confers an all time power on the executive. This will be clear if one contrasts it with s. 89. Section 89 gives a limited power to the Central Government to adapt existing laws within a period of two years. Though, as will be noticed later, s. 89 is wider in certain respects, it is clearly a transitory provision intended to enable the Central Government to tide over the

difficulties caused by the sudden creation of a new territory and the immediate need for having laws applicable therto. The transitoriness is indeed emphasised by the concluding words of s. 89, (which are really superfluous) that the adaptation will hold the field only until they are altered, repealed or amended by a competent legislature or authority. But s. 87 empowers the Central Government to extend any legislation to Chandigarh at any time: even today, twenty three years after the passing of Reorganisation Act.

(ii) The second feature of s. 87 is this. Under it, the Central Government could extend to the Union Territory any law in force in any part of India. For instance, it could be the Rent Control Act in force in Punjab or the Rent Control Act in operation in a distant State like the State of Tamil Nadu. It could perhaps extend to the Union Territory some provisions of the rent control legislation in one State side by side with certain other provisions of legislations in force in any other State or States and thus enforce a law which would be an "amalgam" of various statutory provisions in force in various parts of the country. Though a concession against this possibility was made in *Delhi Laws Act case* (1951 SCR 747 at p. 1005), it would seem to be possible if such provisions are contained in independent enactments. Here, for e.g. the 1949 Act and the 1985 Act, both of Punjab, have been made applicable to Chandigarh. But suppose, after the provisions of the 1949 Act had been made applicable to Chandigarh by the 1974 Act, an amendment Act of the nature presently in question had been introduced not in the Punjab but, say, in Kerala, there is nothing in the language of s. 87 to prohibit the Central Government from extending the Kerala Amendment Act to Chandigarh to stand side by side with the 1974 Act. In other words, the section confers on the executive government a wide power of choice, for application to Chandigarh, of not only one legislative enactment on any subject from among various enactments on that subject in operation in various parts of the country but also of groups of provisions from one or more of them. There is no legislative guidance as to the manner in which these choices should be exercised by the executive government.

(iii) The laws that can be extended to the Union Territory under s. 87 would include not only the laws in force in any State in India on the date of the Reorganisation Act (i.e. 1.11.66) but any Act that may come into force in those States upto the date of the notification. If it had been restricted to laws in force as on the day the Reorganisation Act came into force, one could at least say that Parliament could be attributed with a knowledge of the various provisions in existence in

A the various states, and to have decided, as a matter of policy that anyone of them could be good enough for Chandigarh and hence left it to the executive government to choose and extend any one of them for application to the territory. But section 87 goes further and enables extension, by Government notification, even of any legislation which might come into force in any part of India at any time between 1966 B and the date of the notification. Parliament, while enacting the Reorganisation Act, could certainly have had no knowledge or even inkling of possible laws that might be enacted in future in any part of the country on any subject. The effect, therefore, of s. 87 would be that the entire legislation for the Union Territory, in respect of any particular subject, would entirely depend upon the fancy of the Central Government without any sort of legislative or parliamentary C application of mind, except the fact that some legislature in some part of the country has considered the law good enough for the conditions prevailing in that territory. Learned counsel contends that these facets of section 87 clearly render it an instance of excessive delegation by Parliament to executive amounting, in effect, to the total abdication by D Parliament of its legislative powers in regard to Chandigarh.

The problem posed before us is, what Chinnappa Reddy, J. in *Registrar of Cooperative Societies* v. *Kunhambu,* [1980] 2 SCR 260 described as, the "perennial, nagging problem of delegated legislation and the so called Henry VIII clause". This is an issue on which there is E an abundance of authority, of even larger Benches of this Court. The judgments in *R.* v. *Burah,* [1878] 5 I.A. 178; *Jatindra Nath Gupta,* [1949] FCR 595; the *Delhi Laws Act case,* [1951] SCR 747; *Hari Shankar Bagla,* [1955] 1 SCR 380; *Rajnarain Singh,* [1955] 1 SCR 290; *Sardar Inder Singh,* [1957] SCR 605; *Banarsi Das,* [1959] 1 SCR 427; *Edward Mills,* [1959] 1 SCR 735; *Western India Theatres,* [1959] Supp 2 F SCR 71; *Hamdard Dawakhana,* [1960] 2 SCR 671; *Vasantlal Maghanbhai,* [1961] 1 SCR 341; *Jyoti Prashad,* [1962] 2 SCR 125; *Shama Rao,* [1962] 2 SCR 650; *Mohammad Hussain Gulam Mohammad,* [1962] 2 SCR 659; *Liberty Cinema,* [1965] 2 SCR 477; *Devi Dass,* [1967] 3 SCR 557; *Birla Cotton,* [1968] 3 SCR 251; *Sitaram Bishambar Dayal,* [1972] 2 SCR 141; *Hiralal Ratanlal,* [1973] 2 SCR 502; *Gwalior* G *Rayon,* [1974] 2 SCR 879; *Papiah,* [1975]-3 SCR 607 and *Kunhambu,* [1980] 2 SCR 260 and *Brij Sunder Kapoor,* [1989] 1 SCC 561 can be referred to for a detailed discussion and application of the relevant principles in the context of various kinds of legislative provisions. It is unnecessary, for our present purposes, to undertake a detailed examination of the several opinions expressed in these cases. Suffice it to say H that these decisions have been interpreted as holding that the power of

Parliament to entrust legislative powers to some other body or authority is not unbridled and absolute. It must lay down essential legislative policy and indicate the guidelines to be kept in view by that authority in exercising the delegated powers. In delegating such powers, Parliament cannot "abdicate" its legislative functions in favour of such authority.

Doubts have been expressed in some quarters as to the correctness of the principle indicated above. It has been suggested that, had the question been *res integra* or even if one carefully analysed the observations made in these various cases, there is much to be said for a different view advocated by the Privy Council in *R.* v. *Burah,* [1878] 5 I.A. 178 and adhered to by it ever since. This view is that, given the present system of Parliamentary democracy, the extensive range of governmental functions today and the kind and quantity of legislation which modern public opinion requires, the legislatures under the Constitution should be held to be supreme and unrestricted in the matter of legislation and should not be prohibited from delegating some of their powers of legislation to such other agencies, bodies or authorities as they may choose, so long as they do not altogether divest themselves of their legislative power and confer them on another and so long as they retain the power, whenever it pleases them, to remove the agency they have created and set up another or take the matter directly into their own hands. The reasons put forward in support of this line of thought are these:

(1) The whole doctrine of excessive delegation is based either on the doctrine of separation of powers or on the doctrine of the law of agency: "delegata potestas non potest delegari", neither of which can validly apply to the constitutional context we are concerned with.

(2) The Privy Council, ever since its leading decision in *R.* v. *Burah,* [1878] 5 I.A. 178, has taken this view consistently. This is also the view to which American and Australian courts have veered round in recent years.

(3) The doctrine enunciated in the above cases is so difficult of practical application and has resulted in such a large number of separate judgments that litigants are encouraged to raise the plea in respect of every conceivable piece of delegation banking on an off chance of being ultimately successful.

A (4) The magnitude of the controversies raised on this issue is so great that legislations, if invalidated on this ground, have to be invariably validated with retrospective effect. The result is that, on the one hand, the implementation of important legislations is held up due to interim orders for the long period of pendency of the litigation and even the final determination, on B the other, achieves no practical result. In short, the consideration of such issues is practically a waste of judicial time.

5. The doctrine is based on the theory that it is the legislature and not the executive that has to apply its mind to the basis of all legislation. Judicial dicta are not wanting which emphasise that this is a theory wholly unrelated to the practical realities of C the modern functioning of a cabinet system of Government.

6. An examination of the cases decided on this principle show that it is very difficult to define the scope of "essential legislative function" which cannot be delegated. In the ultimate D analysis, only lip service is paid to the doctrine of legislative policy and guidance and courts are inclined to grab at the weakest of straws as a policy or guideline with which to bale out an impugned piece of legislation rather than invalidate it.

(7) There have been cases where the delegation of the tax- E ing powers has been upheld by drawing on non-existent distinctions such as, for example, one between the delegation of a power to fix the rates of the taxes to be charged on different classes of goods and the power to fix rates of taxes simpliciter.

(8) There is clear inconsistency between *Shama Rao,* F [1962] 2 SCR 650 and the decision in the *Delhi Laws Act,* case upholding the delegation to the executive of the power to extend not only present but also future laws to a particular territory. *Shama Rao* does not answer the question posed before it that the validity of such legislation follows on the answer given by *Delhi Laws* to categories (3) and (4) of Bose J.'s summary of its deci- G sion in *Rajnarain*.

(9) The Indian Statute book contains any number of legislations, on tax matters as well as others, conferring a wide range of delegation of powers and a search for guidelines or policy underlying them may well prove an unending quest.

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(10) Judicial dicta abound where it has been pointed out that, so long as the legislature has preserved its capacity in tact and retained control over its delegate, so as to be able, at any time, to repeal the legislation and withdraw the authority and discretion it had vested in the delegate, it cannot be said to have abdicated its legislative functions. A

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Chinnappa Reddy, J. in *Kunhambu,* [1980] 2 SCR 260, did not wish to be drawn into the *pros* and *cons* of the above line of reasoning. His Lordship observed that the clear trend of a large number of the decisions of this Court was in favour of the "policy" and "guidelines" theory and he was content to adopt the same for the purposes of the case before the Court. This theory, which is capable of being formulated in broad terms, though difficult of practical application to individual cases as and when they arise, can be set out best in the words of Reddy, J. in the above case: C

> "It is trite to say that the function of the State has long since ceased to be confined to the preservation of the public peace, the exaction of taxes and the defence of its frontiers. It is now the function of the State to secure to its citizens 'social, economic and political justice', to preserve 'liberty of thought, expression, belief, faith and worship', and to ensure 'equality of status and of opportunity' and 'the dignity of the individual' and the 'unity of the nation'. That is what the Preamble to our Constitution says and that is what is elaborated in the two vital chapters of the Constitution on Fundamental Rights and Directive Principles of State Policy. The desire to attain these objectives has necessarily resulted in intense legislative activity touching every aspect of the life of the citizen and the nation. Executive activity in the field of delegated or subordinate legislation has increased in direct, geometric progression. It has to be and it is as it should be. The Parliament and the State Legislatures are not bodies of experts or specialists. They are skilled in the art of discovering the aspirations, the expectations and the needs, the limits to the patience and the acquiescence and the articulation of the views of the people whom they represent. They function best when they concern themselves with general principles, broad objectives and fundamental issues instead of technical and situational intricacies which are better left to better equipped full time expert executive bodies and specialist public
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servants. Parliament and the State Legislatures have neither the time nor the expertise to be involved in detail and circumstance. Nor can Parliament and the State Legislatures visualise and provide for new strange, unforeseen and unpredictable situations arising from the complexity of modern life and the ingenuity of modern man. That is the raison d'etre for delegated legislation. That is what makes delegated legislation inevitable and indispensable. The Indian Parliament and the State Legislatures are endowed with plenary power to legislate upon any of the subjects entrusted to them by the Constitution, subject to the limitations imposed by the Constitution itself. The power to legislate carries with it the power to delegate. But excessive delegation may amount to abdication. Delegation unlimited may invite despotism uninhibited. So the theory has been evolved that the legislature cannot delegate its essential legislative function. Legislate it must by laying down policy and principle and delegate it may to fill in detail and carry out policy. The legislature may guide the delegate by speaking through the express provision empowering delegation or the other provisions of the statute, the preamble, the scheme or even the very subject matter of the statute. If guidance there is, wherever it may be found, the delegation is valid. A good deal of latitude has been held to be permissible in the case of taxing statutes and on the same principle a generous degree of latitude must be permissible in the case of welfare legislation, particularly those statutes which are designed to further the Directive Principles of State Policy."

The same view was taken by Khanna J. in *Gwalior Rayon,* [1974] 2 SCR 879 when, after reviewing the entire literature on the subject, he observed:

"It would appear from the above that the view taken by this Court in a long chain of authorities is that the legislature in conferring power upon another authority to make subordinate or ancillary legislation must lay down policy, principle, or standard for the guidance of the authority concerned. The said view has been affirmed by Benches of this Court consisting of seven Judges. Nothing cogent, in our opinion, has been brought to our notice as may justify departure from the said view. The binding effect of that

view cannot be watered down by the opinion of a writer, however eminent he may be, nor by observations in foreign judgments made in the context of the statutes with which they were dealing."

If this be the consistent view of this court on this thorny issue, Sri Manoj Swarup says, section 87 clearly offends the principle so enunciated, particularly, when one considers the extremely broad sweep of its language. In empowering the executive to extend laws to Chandigarh to the contents of which Parliament has not applied its mind and further in allowing the executive to exercise a choice among several such existing and future laws, Parliament has in fact abdicated its essential legislative functions in relation to the Union Territory in favour of the Central Government and given the go-by to the elaborate procedures and safeguards enacted in the Constitution in regard to the process of legislation by Parliament or a State Legislature. There would have been considerable force in this contention had it not been for the decision in the *Delhi Laws Act* case 1951 SCR 747. As has been pointed out earlier, that decision clearly upheld the validity of s. 7 of Act I, section 2 of Act II and the first part of s. 2 of Act III which did, in relation to Delhi, Ajmer-Marwara and Part C States, exactly that which has been done by s. 87 in relation to Chandigarh despite the fact that some of the judges struck a different line from *R.* v. *Burah,* [1878] 5 IA 178, refused to accept the theory of absolute freedom for Parliament to delegate its powers and enunciated the "policy-guideline" theory which has been taken up in subsequent decisions of this Court. It is said that there are some difficulties in straightaway treating *Delhi Laws Act,* [1951] SCR 747 as conclusive of the issue before us. In the first place, that was a decision which reflected the advisory opinion of this Court in a reference made by the President under Art. 143(1) of the Constitution which, technically speaking, is not a binding precedent. Secondly, although five of the seven learned Judges upheld the validity of the provisions referred to above, it is difficult to clearly formulate the principle which emerges therefrom, for, as Patanjali Sastri C.J. observed in *Kewal Raning Rawat* v. *State,* [1952] SCR 435:

"While undoubtedly certain definite conclusions were reached by the majority of the judges who took part in the decision in regard to the constitutionality of certain specified enactments, the reasoning in each case was different and it is difficult to say that any particular principle has been laid down by the majority which can be of assistence in the determination of other cases".

A Thirdly, *Shama Rao,* [1967] 2 SC 650 is said to be a binding decision of a Constitution Bench of this Court to the contrary and that has to be followed by us.

Since the *Delhi Laws Act case,* [1951] SCR 747 was concerned with provisions identical in language to the one before us, it is only B proper and appropriate for us to refer to the reasoning of the judges in the *Delhi Laws Act case* in regard to the provisions the validity of which was upheld:

A. Kania CJ. held that all the provisions under consideration were *ultra vires* to the extent they permitted the extension of Acts C other than those of the Central Legislature to the areas in question. His view was that the essentials of a legislative function are the determination of the legislative policy and its formulation as a rule of conduct and these essentials are the characteristics of a legislature itself. These essentials are preserved when the legislature specifies the basic conclusions of fact upon the ascertainment of which from rele- D vant data by a designated administrative agency it ordains that its statutory command is to be effective. The legislature having thus made its laws, every detail for working it out and for carrying the enactment into operation and effect may be done by the legislature or may be left to another subordinate agency or to some executive officer. His Lordship was further of the opinion that, if full powers to do everything that E the legislature can do are conferred on a subordinate authority, although the legislature retains the power to control the action of the subordinate authority by recalling such power or repealing the Acts passed by the subordinate authority, there is an abdication or effacement of the legislature conferring such power. Even such partial "abdication or effacement" is not permissible. The provisions F impugned were, therefore, invalid.

B. The salient point in the opinion of *Fazal Ali* J. are these:

1. Even American Courts, which are fiercely opposed to uncanalised delegation of legislative power to the executive, have been G compelled, by practical considerations, to engraft numerous exceptions to the rule and, in laying down such exceptions, have offered various explanations, one of which is this:

> "The true distinction ..... is this. The legislature cannot delegate the power to make a law; but it can make a law to H delegate a power to determine some fact or state of things

upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of Government." A

(P. 814)

2. The true import of the rule against delegation is this: B

"This rule in a broad sense involves the principle underlying the maxim, delegatus non potest delegare, but it is apt to be misunderstood and has been misunderstood. In my judgment, all that it means is that the legislature cannot abdicate its legislative functions and it cannot efface itself and set up a parallel legislature to discharge the primary duty with which it has been entrusted. This rule has been recognised both in America and in England ....." C

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"What constitutes abdication and what class of cases will be covered by that expression will always be a question of fact, and it is by no means easy to lay down any comprehensive formula to define it, but it should be recognised that the rule against abdication does not prohibit the Legislature from employing any subordinate agency of its own choice for doing such subsidiary acts as may be necessary to make its legislation effective, useful and complete". D E

(P. 819)

3. The conclusions are set but thus:

"(1) The legislature must normally discharge its primary legislative function itself and not through others. F

(2) Once it is established that it has sovereign powers within a certain sphere, it must follow as a corollary that it is free to legislate within that sphere in any way which appears to it to be the best way to give effect to its intention and policy in making a particular law, and that it may utilize any outside agency to any extent it finds necessary for doing things which it is unable to do itself or finds it inconvenient to do. In other words, it can do everything which is ancillary to and necessary for the full and effective exercise of its power of legislation. G H

A (3) It cannot abdicate its legislative functions, and therefore while entrusting power to an outside agency, it must see that such agency acts as a subordinate authority and does not become a parallel legislature.

B (4) The doctrine of separation of powers and the judicial interpretation it has received in America ever since the American Constitution was framed, enables the American courts to check undue and excessive delegation but the courts of this country are not committed to that doctrine and cannot apply it in the same way as it has been applied in America. Therefore, there are only two main checks in C this country on the power of the legislature to delegate, these being its good sense and the principle that it should not cross the line beyond which delegation amounts to "abdication and self-effacement".

(P. 830-1)

D 4. The learned Judge recognised that the impugned provisions, at first sight, did appear to be very wide—they were of the same sweeping nature as s. 87 here—and observed.

"Let us overlook for the time being the power to introduce modifications with which I shall deal later, and carefully E consider the main provision in the three Acts. The situation with which the respective legislatures were faced when these Acts were passed, was that there were certain State or States, with no local legislature and a whole bundle of laws had to be enacted for them. It is clear that the legislatures concerned before passing the Acts, applied their F mind and decided firstly, that the situation would be met by the adoption of laws applicable to the other provinces inasmuch as they covered a wide range of subjects approached from a variety of points of view and hence the requirements of the State or States for which the laws had to be framed could not go beyond those for which laws had G already been framed by the various legislatures, and secondly, that the matter should be entrusted to an authority which was expected to be familiar and could easily make itself familiar with the needs and conditions of the State or States for which the laws were to be made. Thus, everyone of the Acts so enacted was a complete law, H because it embodied a policy, defined a standard, and

directed the authority chosen to act within certain prescribed limits and not to go beyond them. Each Act was a complete expression of the will of the legislature to act in a particular way and of its command as to how its will should be carried out. The legislature decided that in the circumstances of the case that was the best way to legislate on the subject and it so legislated. It will be a misnomer to describe such legislation as amounting to abdication of powers; because from the very nature of the legislation it is manifest that the legislature had the power at any moment of withdrawing or altering any power with which the authority chosen was entrusted, and could change or repeal the laws which the authority was required to make applicable to the State or States concerned. What is even more important is that in each case the agency selected was not empowered to enact laws, but it could only adapt and extend laws enacted by responsible and competent legislatures. Thus, the power given to the Governments in those Acts was more in the nature of ministerial than in the nature of legislative power. The power given was ministerial, because all that the Government had to do was to study the laws and make selections out of them."

(pp. 838-9)

He proceeded to point out that such legislation was neither unwarranted nor unprecedented.

5. Following the line of reasoning in *Sprigg* v. *Sigoau,* [1897] A.C. 233 the learned Judge held that what the Central Government had been empowered to do under the impugned legislations was not to enact "new laws" but only "to transplant" to the territory concerned laws operating in other parts in the country. As to the absence of a clause—such as the one in the enactment considered in *Sprigg* and the latter part of s. 89 that any extensions made shall be subject to repeal, alteration or variation by Parliament, the learned Judge observed,

"This provision however does not affect the principle. It was made only as a matter of caution and to ensure the superintendence of Parliament, for the laws were good laws until they were repealed, altered or varied by Parliament. If the Privy Council have correctly stated the principle that the legislature in enacting subordinate or conditional legislation does not part with its perfect control and

A has the power at any moment of withdrawing or altering the power entrusted to another authority, its power of superintendence must be taken to be implicit in all such legislation. Reference may also be made here to somewhat unusual case of *Dorr* v. *United States,* [1904] 195 US 138, where delegation by Congress of the power to legislate for
B the Phillipine Islands was held valid."

(p. 843)

6. Indian legislation, past and present, contains numerous instances of enactments whereunder power was conferred on a local Government to extend to the local territory laws in force in other parts
C of the country as on the date of such extension. The learned Judge observed:

"It is hard to say that any firm legislative practice had been established before the Delhi Laws Act and other Acts we are concerned with were enacted, but one may presume
D that the legislature had made several experiments before the passing of these Acts and found that they had worked well and achieved the object for which they were intended." (p. 846)

7. The learned Judge concluded with a few general observations
E on the subject of "delegated legislation" in its popular sense. He observed:

"The legislature has now to make so many laws that it has no time to devote to all the legislative details, and sometimes the subject on which it has to legislate is of such a
F technical nature and all it can do is to state the broad principles and leave the details to be worked out by those who are more familiar with the subject. Again, when complex schemes of reform are to be the subject of legislation, it is difficult to bring out a self contained and complete Act straightaway, since it is not possible to foresee all the con-
G tingencies and envisage all the local requirements for which provision is to be made. Thus, some degree of flexibility becomes necessary, so as to permit constant adaptation to unknown future conditions without the necessity of having to amend the law again and again. The advantage of such a course is that it enables the delegate authority to consult
H interests likely to be affected by a particular law, make

actual experiments when necessary, and utilize the results of its investigations and experiments in the best way possible. There may also arise emergencies and urgent situations requiring prompt action and the entrustment of large powers to authorities who have to deal with the various situations as they arise. A

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It is obvios that to achieve the objects which were intended to be achieved by these Acts, they could not have been framed in any other way than that in which they were framed". (p. 851-2)

C

C. Patanjali Sastri, J. upheld the validity of all the impugned provisions. His Lordship held that it is as competent for the Indian Legislature to make a law delegating legislative power, both quantitatively and qualitatively, as it is for Parliament to do so provided, of course, it acts within the circumscribed limits. The learned judge, however, drew a distinction between delegation of legislative authority and the creation of a new legislative power. He observed: D

In the former the delegating body does not efface itself but retains its legislative power intact and merely elects to exercise such power through an agency or instrumentality of its choice. In the latter there is no delegation of power to subordinate units but a grant of power to an independent and co-ordinate body to make laws operating of their own force. In the first case, according to English constitutional law, no express provision authorising delegation is required. In the absence of a constitutional inhibition, delegation of legislative power, however extensive, could be made so long as the delegating body retains its own legislative power intact. In the second case, a positive enabling provision in the constitutional document is required. E F

D. Mahajan J. shared the view of Kania CJ that all the impugned provisions were *ultra vires*. His Lordship considered it a settled maxim of constitutional law that a legislative body cannot delegate its power. The legislature cannot substitute the judgment, wisdom and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust. Unless the power to delegate is expressly given by the Constitution—and it has not been—a legislature cannot G H

A abdicate its functions and delegate essential legislative functions to any other body. There is such abdication when in respect of a subject in the legislative list that body says in effect that it will not legislate but would leave it to another to legislate on it.

E. To turn next to the views of *Mukharjea J.* the learned Judge B considered the following aspects:

1. The learned Judge did not accept the principle that an unlimited right of delegation is inherent in the legislative power itself. He observed:

> C "This is not warranted by the provisions of the Constitution and the legitimacy of delegation depends entirely upon its being used as an ancillary measure which the legislature considers to be necessary for the purpose of exercising its legislative powers effectively and completely. The legislature must retain in its own hands the essential legislative D functions which consist in declaring the legislative policy and laying down the standard which is to be enacted into a rule of law, and what can be delegated is the task of subordinate legislation which by its very nature is ancillary to the statute which delegates the power to make it. Provided the legislative policy is enunciated with sufficient clearness or a E standard laid down the courts cannot and should not interfere with the discretion that undoubtedly rests with the legislature itself in determining the extent of delegation necessary in a particular case. These, in my opinion, are the limits within which delegated legislation is constitutional provided of course, the legislature is competent to deal F with and legislate on the particular subject matter".
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> (P. 997)

2. Dealing with the question whether the statutory provisions under consideration envisaged an unwarrantable delegation of legislative powers to the executive government, the learned Judges said:

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> "If the competent legislature has framed a statute and left it to an outside authority to extend the operation of the whole or any part of it, by notification, to any particular area, it would certainly be an instance of conditional legislation as discussed above and no question of delegation H would really arise. The position would not be materially

different, if instead of framing a statute, the legislature had specified one or more existing statutes or annexed them by way of a schedule to the Act and had given authority to a subordinate or administrative agency to enforce the operation of any one of them at any time it liked to a particular area. It could still be said, in my opinion, that in such circumstances the proper legislature had exercised its judgment already and the subordinate agency was merely to determine the condition upon which the provisions already made could become operative in any particular locality".

(P. 999-1000)

3. Adverting to the wide power in the impugned provision to extend future laws as well and that too with the modifications and restrictions, he observed:

"The question is whether these facts indicate a surrender of the essential powers of legislation by the legislature. The point does not seem to be altogether free from difficulty, but on careful consideration I am inclined to answer this question in the negative. As I have already said, the essential legislative power consists in formulating the legislative policy and enacting it into a binding rule of law. With the merits of the legislative policy, the court of law has no concern. It is enough if it is defined with sufficient precision and definiteness so as to furnish sufficient guidance to the executive officer who has got to work it out. If there is no vagueness or indefiniteness in the formulation of the policy, I do not think that a court of law has got any say in the matter. The policy behind the Delhi Laws Act seems to be that in a small area like Delhi which was constituted a separate province only recently and which had neither any local legislature of its own nor was considered to be of sufficient size or importance to have one in the near future, it seemed to the legislature to be quite fit and proper that the laws validly passed and in force in other parts of India should be applied to such area, subject to such restrictions and modification as might be necessary to make the law suitable to the local conditions. The legislative body thought fit that the power of making selection from the existing statutes as to the suitability of any one of them for being applied to the province of Delhi, should rest with the Governor General in Council which was considered to be

A the most competent authority to judge the necessities and requirements of the Province. That this was the policy is apparent from several other legislative enactments which were passed prior to 1912 and which would show that with regard to areas which were backward or newly acquired or extremely small in size and in which it was not considered B proper to introduce the regular legislative machinery all at once, this was the practice adopted by the legislature at that time."

(P. 1000-1)

4. one more passage from the opinion of the learned Judge may C be set out in regard to two aspects of the impugned provision that were touched upon before us. The learned Judge said:

"Of course the delegate cannot be allowed to change the policy declared by the legislature and it cannot be given the power to repeal or abrogate any statute. This leads us to D the question as to what is implied in the language of section 7 of the Delhi Laws Act which empowers the Central Government to extend any statute in force in any other part of British India to the Province of Delhi with such 'modifications and restrictions' as it thinks fit. The word "restriction" does not present much difficulty. It connotes limita- E tion imposed upon a particular provision so as to restrain its application or limit its scope. It does not by any means involve any change in the principle. It seems to me that in the context, and used along with the word "restriction", the word "modification" has been employed also in a cognate sense and it does not involve any material or sub- F stantial alteration. The dictionary meaning of the expression "to modify" is to "tone down" or "to soften the rigidity of the thing" or "to make partial changes without any radical alteration." It would be quite reasonable to hold that the word "modification" in section 7 of the Delhi Laws Act means and signifies changes of such character as G are necessary to make the statute which is sought to be extended suitable to the local conditions of the province. I do not think that the executive government is entitled to change the whole nature or policy underlying any particular Act or take different portions from different statutes and prepare what has been described before us as "amalgam" H of several laws. The Attorney General has very fairly

admitted before us that these things would be beyond the scope of the section itself and if such changes are made, they would be invalid as contravening the provision of section 7 of the Delhi Laws Act, though that is no reason for holding section 7 itself to be invalid on that ground."

(P. 1004-5)

5. Mukharjee J. however joined with Kania CJ., Mahajan J. and Bose J. in upsetting the validity of the second part of s. 2 of Act III. Since this part of the judgment has been relied on by the learned counsel for the petitioners, it may also be referred to here. On this aspect, the learned Judge observed:

"It will be noticed that the powers conferred by this section upon the Central Government are far in excess of those conferred by the other two legislative provisions, at least in accordance with the interpretation which I have attempted to put upon them. As has been stated already, it is quite an intelligible policy that so long as a proper legislative machinery is not set up in a particular area, the Parliament might empower an executive authority to introduce laws validly passed by a competent legislature and actually in force in other parts of the country to such area, with such modifications and restrictions as the authority thinks proper, the modifications being limited to local adjustments or changes of a minor character. But this presupposes that there is no existing law on that particular subject actually in force in that territory. If any such law exists and power is given to repeal or abrogate such laws either in whole in part and substitute in place of the same other laws which are in force in other areas, it would certainly amount to an unwarrantable delegation of legislative powers. To repeal or abrogate an existing law is the exercise of an essential legislative power, and the policy behind such acts must be the policy of the legislature itself. If the legislature invests the executive with the power to determine as to which of the laws in force in a particular territory are useful or proper and if it is given to that authority to replace any of them by laws brought from other provinces with such modification as it thinks proper, that would be to invest the executive with the determination of the entire legislative policy and not merely of carrying out a policy which the legislature has already laid down. Thus the

power of extension, which is contemplated by section 2 of Part C States (Laws) Act, includes the power of introducing laws which may be in actual conflict with the laws validly established and already in operation in that territory. This shows how the practice, which was adopted during the early British period as an expedient and possibly harmless measure with the object of providing laws for a newly acquired territory or backward area till it grew up into a full fledged administrative and political unit, is being resorted to in later times for no other purpose than that of vesting almost unrestricted legislative powers with regard to certain areas in the executive government. The executive government is given the authority to alter, repeal or amend any laws in existence at that area under the guise of bringing in laws there which are valid in other parts of India. This, in my opinion, is an unwarrantable delegation of legislative duties and cannot be permitted. The last portion of section 2 of Part C States (Laws) Act is, therefore, *ultra vires* the power of the Parliament as being a delegation of essential legislative powers in favour of a body not competent to exercise it and to that extent the legislation must be held to be void. This portion is however severable; and so the entire section need not be declared invalid."

(P. 1008-1010)

F. Das J., who upheld the validity of section 7 of Act I, section 2 of Act II and both parts of section 2 of Act III, rested his conclusions on the following reasoning:

(i) After expressing the opinion that the principle of non delegability of legislative powers founded either on the doctrine of separation of powers or on the theory of agency had no application to the British Parliament or the legislatures constituted by an Act of the British Parliament and that, in the ever present complexity of conditions with which Governments have to deal, a power of delegation is necessary and ancillary to the exercise of legislative power and is a component part of it, the learned Judge observed:

"The only rational limitation upon the exercise of this absolute power of delegation by the Indian Legislature as by any Dominion Legislature is what has been laid down in the several Privy Council and other cases from which relevant passages have been quoted above. It is that the legisla-

ture must not efface itself or abdicate all its powers and give up its control over the subordinate authority to whom it delegates its law making powers. It must not, without preserving its own capacity intact, create and arm with its own capacity a new legislative power not created or authorised by the instrument by which the legislature itself was constituted. In short, it must not destroy its own legislative power. There is an antithesis between the abdication of legislative power and the exercise of the power of legislation. The former excludes or destroys the latter. There is no such antithesis between the delegation of legislative power and the exercise of the legislative power, for however wide the delegation may be, there is nothing to prevent the legislature, if it is so minded, from, at any time, withdrawing the matter into its own hands and exercising its law-making powers. The delegation of legislative power involves an exercise of the legislative power. It does not exclude or destroy the legislative power itself, for the legislative power is not diminished by the exercise of it. A power to make law with respect to a subject must, as we have seen, include within its content, the power to make a law delegating that power. Having regard to entry No. 97 in the Union List and article 248 of our Constitution, the residuary power of our Parliament is wide enough to include delegation of legislative power of a subject-matter with respect to which Parliament may make a law. Apart from that considertion, if a statute laying down a policy and delegating power to a subordinate authority to make rules and regulations to carry out that policy is permissible then I do not see why an Act merely delegating legislative power to another person or body should be unconstitutional if the legislature does not efface itself or abandon its control over the subordinate authority. If the legislature can make a law laying down a bare principle or policy and commanding people to obey the rules and regulations, made by a subordinate authority, why cannot the legislature, without effacing itself but keeping its own capacity intact, leave the entire matter to a subordinate authority and command people to obey the commands of that subordinate authority? The substance of the thing is the command which is binding and the efficacy of the rules of conduct made by the subordinate authority is due to no other authority than the command of the legislature itself. Therefore, short of self-

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A effacement, the legislative power may be as freely and widely delegated as the Dominion Legislature, like the British Parliament, may think fit and choose.

xxx xxx xxx

B In my opinion, the true tests of the validity of a law enacted by the Indian Legislature conferring legislative power on a subordinate authority are : (i) Is the law within the legislative competency fixed by the instrument creating the legislature? and (ii) Has the legislature effaced itself or abdicated or destroyed its own legislative power? If the C answer to the first is in the affirmative and that to the second in the nagative, it is not for any Court of justice to enquire further or to question the wisdom or the policy of the law.

2. Dealing with the necessity for limiting or restricting the D powers of delegation the learned Judge observed:

"It is said that it will be dangerous if the legislature is permitted to delegate all its legislative functions without formally abdicating its control or effacing itself, for then the legislature will shirk its responsibility and go to sleep E and peoples' life, liberty or property may be made to depend on the whims of the meanest policy officer in whom, by successive delegation, the legislative power may come to be vested. I do not feel perturbed. I do not share the feeling of oppression which some people may possibly entertain as to the danger that may ensue if the legislature F goes to sleep after delegating its legislative functions, for I feel sure that the legislators so falling into slumber will have a rude awakening when they will find themselves thrown out of the legislative chamber at the next general election. I have no doubt in my mind that the legislature after delegating its powers will always keep a watchful eye G on the activities of the persons to whom it delegates its powers of legislation and that as soon as it finds that the powers are being misused to the detriment of the public, the legislature will either nullify the acts done under such delegation or appoint some more competent authority or withdraw the matter into its own hands. There is and will H always remain some risk of abuse whenever wide legislative

powers are committed in general terms to a subordinate body, but the remedy lies in the corrective power of the legislature itself and, on ultimate analysis, in the vigilance of public opinion and not in arbitrary judicial fiat against the free exercise of law-making power by the legislature within the ambit fixed by the instrument of its constitution. It is not for the court to substitute its own notions of expediency of the will of the legislature. This, I apprehend, is the correct position in law. In my judgment, if our law is not to be completely divorced from logic and is not to give way and surrender itself to sterile dogma, the widest power of delegation of legislative power must perforce be conceded to our Parliament. A denial of this necessary power will "stop the wheels of government" and we shall be acting "as a clog upon the legislative and executive departments."

3. The learned Judge also referred to the Indian legislative practice and relied on several instances of enactments such as the ones in question before the Court and observed:

"During the time of the expansion of the British possessions in India, small bits of territories in outlying parts of Indian were being constantly annexed by the British but on account of the smallness of such territories or the undesirability of their immediate merger with the established Provinces it was not found to be practically possible to provide legislative Councils for these enclaves. Nor was it possible for the Governor-General in Council to enact laws for the day to day administration of these bits of territories or for all their needs. The practice, therefore, grew up for the Governor-General in Council, by a simple legislation, to confer power on the Lieutenant-Governor to extend to such territories such of the laws as were or might be in force in other parts of the territories under the Lieutenant-Governor which were considered suitable for these territories. Such practice was certainly convenient, and ever since *Burah's* case does not appear to have been seriously questioned. I do not say that the argument has no merit, but in the view I have taken and expressed above, I do not find it necessary, on the present occasion to base my opinion on this argument.

A G. *Bose J.* observed that he was not enamoured of this kind of legislation and did not like "this shirking of responsibility, for after all, the main function of the legislature is to legislate and not to leave that to others." He, however, leaned in favour of upholding the statutes in question before the court for the following reasons.

B 1. Two of the Acts under consideration before the court were Acts of British Parliament and had to be looked at through British eyes. In the face of *Queen* v. *Burah,* [1878] 5 I.A. 173, there was no doubt that this legislation would have been upheld and it was not necessary to enquire further because no single decision of the Judicial Committee had thrown any doubt on the soundness of *Burah's* case.

C 2. Act III however, stood on a different footing as it was an Act of the Indian Parliament of 1950. One had to try to discover from the Constitution itself what concept of legislative power Parliament had in mind while framing the Constitution. The learned Judge observed:

> D "Now in endeavouring to discover from the Constitution what the Constituent Assembly thought of this grave problem. I consider it proper to take the following matters into consideration. First, it has been acknowledged in all free countries that it is impossible to carry on the government of a modern State with its infinite complexities and ramifica-
> E tions without a large devolution of power and delegation of authority. It is needless to cite authority. The proposition is self-evident. Next, the practical application of that principle has been evident through the years both in India and in other parts of the British Empire and in England itself. In the third place, even in America, Judges have had to veer
> F away from the rigidity of their earlier doctrine and devise ways and means for softening its rigour and have not always been able, under a barrage of words, to disguise the fact that they are in truth and in fact effecting a departure because compelled to do by the force of circumstances."

G 3. After pointing out the similarities between the Constitution and the Government of India Act of 1935, the learned Judge concluded:

> "I prefer therefore to hold that that which *The Queen* v. *Burah*, authorised, whatever you may choose to call it, was
> H not abrogated except in special cases.

I so hold for another reason as well namely, that to decide otherwise would make the Government of India an exceedingly difficult matter and would put back the hands of the clock. I prefer therefore to hold—and that has the logic of history behind it—that the concept of legislative power which had hitherto been accepted in India continued to hold good but that this limitation was placed upon it by the Constitution, namely that wherever the Constitution empowers Parliament to do a particular thing as opposed to legislating generally on a particular topic, there can be no delegation. Parliament must itself act."

3. Referring to the authorities and text books cited before the Court, the learned Judge observed:

"An anxious scrutiny of all the many authorities and books which were referred to in the arguments, and of the decisions which I have analysed here, leads me to the conclusion that it is difficult to deduce any logical principle from them. In almost every case the decision has been *ad hoc* and in order to meet the exigencies of the case then before them, judges have placed their own meaning on words and phrases which might otherwise have embodied a principle of general application. I have therefore endeavoured, as far as I possibly could, to avoid the use of these disputable terms and have preferred to accept the legacy of the past and deal with this question in a practical way. My conclusion is that the Indian Parliament can legislate along the lines of *The Queen* v. *Burah,* that is to say, it can leave to another person or body the introduction or application of laws which are or may be in existence at that time in any part of India which is subject to the legislative control of Parliament, whether those laws were enacted by Parliament or by a State Legislature set up by the Constitution. That has been the practice in the past. It has weighty reasons of a practical nature to support it and it does not seem to have been abrogated by the Constitution."

4. The learned Judge, however, held that second part of section 2 of Act 3 could not be held to be valid for the following reasons:

"But I also consider that delegation of this kind cannot proceed beyond that and that it cannot extend to the repe-

aling or altering in essential particulars of laws which are already in force in the area in question. That is a matter which Parliament alone can handle.

I See no reason for extending the scope of legislative delegation beyond the confines which have been hallowed for so long. Had it not been for the fact that this sort of practice was blessed by the Privy Council as far back as 1878 and has been endorsed in a series of decisions ever since, and had it not been for the practical necessities of the case, I would have held all three Acts *ultra vires*. But, so far as the latter portion of the third Act is concerned, no case was cited in which the right to appeal the existing laws of the land and substitute others for them has been upheld. That was tried in a South African case, *Sir John Gorden Sprigg* v. *Sigcau,* [1897] A.C. 238, but the Privy Council held it could not be done, not indeed on any ground which is material here but that is the only case I know where the attempt was made and the right litigated. It is one thing to fill a void or partial vacuum. Quite another to throw out existing laws enacted by a competent authority. It is bad enough to my mind to hold that the first is not a delegation of legislative power. But as that has been held by an authority which it is impossible now to question so far as the past is concerned, I bow to its wisdom. But as to the future, I feel that a body which has been entrusted with the powers of legislation should legislate and not leave the decision of important matters of principle to other minds. I am therefore of opinion that the power upheld by the *Queen* v. *Burah*, does not extend as far as the latter portion of section 2 of the Part C States (Laws) Act of 1950 endeavours to carry it."

A perusal of the above judgments shows that the validity of the provisions in question were upheld on different lines of reasoning. Nevertheless all the learned Judges seem to have agreed—and, indeed, as pointed out in later decisions, it is inevitable in modern conditions—that, while Parliament should have ample and extensive powers of legislation, these should include a power to entrust some of those functions and powers to another body or authority. They also seem to have agreed that there should be a limitation placed on the extent of such entrustment. It is only on the question as to what this limitation should be that there was lack of consensus among the

judges. All of them agreed that it could not be so extensive as to amount to "abdication" or "effacement". Some thought that there is no abdication or effacement unless it is total i.e. unless Parliament surrenders its powers in favour of a "parallel" legislature or loses control over the local authority to such an extent as to be unable to revoke the powers given to, or to exercise effective supervision over, the body entrusted therewith. But others were of opinion that such "abdication" or "effacement" could not even be partial and it would be bad if full powers to do everything that the legislature can do are conferred on a subordinate authority, although the legislature may retain the power to control the action of such authority by recalling such power or repealing the Acts passed by the subordinate authority. A different way in which the second of the above views has been enunciated—and it is this view which has dominated since—is by saying that the legislatures cannot wash their hands off their essential legislative function. Essential legislative function consists in laying down the legislative policy with sufficient clearness and in enunciating the standards which are to be enacted into a rule of law. This cannot be delegated. What can be delegated is only the task of subordinate legislation which is by its very nature ancillary to the statute which delegates the power to make it and which must be within the policy and framework of the guidance provided by the legislature.

It is suggested for the petitioners that, since the reasonings of the learned Judges are so different, we cannot derive any assistance from the *Delhi Laws Act case* and should therefore ignore it. We are unable to accept this suggestion. We think, with respect, that Bose J. was right when he pointed out in *Rajnarain Singh's* case (1955 1 SCR 298) and his summary in the case, of the conclusions arrived at in the *Delhi Laws Act* case has consistently been referred to with approval in later decisions of this Court as an authoritative exposition—that:

> "Because of the elaborate care with which every aspect of the problem was examined in that case, the decision has tended to become diffuse, but if one concentrates on the matters actually decided and forgets for a moment the reasons given, a plain pattern emerges leaving only a narrow margin of doubt for future dispute."

If we apply this formula, whatever reasoning one adopts, the answer to the question posed before us has to be in favour of upholding the constitutional validity of s. 87. One may doubt the wisdom of attempting to trace a common *ratio decidendi* from such divergent views but it

A seems equally illogical to altogether ignore a clear conclusion arrived at by the majority of judges only because they arrived at that conclusion by different processes of reasoning. One would rather have thought that a conclusion stands more fortified when it can be supported not on one but on several lines of reasoning. At least for an identical problem, the final answer, we think, should be the same. This B should particularly be so when we remind ourselves that the *Delhi Laws Act case* arose because, soon after India became a Republic, the Government, envisaging the necessity of having recourse to legislation of this type in the context of the changing topography of India, took the precaution of seeking the advice of the Supreme Court for its future guidance and that they have acted upon the answers pro pounded by the Supreme Court in enacting a provision of this type. In this C situation we find ourselves unable to accept the contention that, after a lapse of thirty-eight years, we should declare that the Delhi Laws Act case decided nothing or, as counsel euphimistically put it, that it should be confined to its own facts.

D It is contended that the above line of approach is one of expediency rather than logic and that, unless one can extract a principle of general application from the *Delhi Laws Act case,* it will not be helpful as a precedent. Even if this is taken to be the proper approach, an answer to the contention is furnished by *Shama Rao* [1955] 2 SCR 650, on which considerable reliance was also placed on behalf of the E petitioners. The facts in that case were that the legislative assembly for the Union Territory of Pondicherry passed a Sales Tax Act (10 of 1965) in June, 1965. Under s 1(2) of the Act, it was to come into force on such date as the Pondicherry Government may, by notification, appoint. S. 2(1) of the Act provided that the Madras General Sales Tax Act, 1959 *as in force in the State of Madras immediately before the* F *commencement of the Pondicherry Act,* shall be extended to Pondicherry subject to certain modifications. The Pondicherry Government issued a notification on March 1, 1966 appointed April 1, 1966 as the date of the commencement of the Pondicherry Act. Prior to the issue of the notification, however, the Madras Legislature had amended the Madras Act and consequently it was the Madras Act as amended upto G April 1, 1966, which was brought into force in Pondicherry. When the Act thus came into force, the petitioner was served with a notice to register himself as a dealer and thereupon he filed a writ petition challenging the validity of the Act. It was contended for the petitioner that the Act was void and was a still-born legislation by reason of the Pondicherry Legislature having abdicated its legislative functions in H favour of the Madras State Legislature. It was argued that such abdica-

tion resulted from the wholesale adoption of the Madras Act as in force in the State of Madras immediately before the commencement of the Pondicherry Act, as s. 2(1) read with s. 1(2) meant that the legislature adopted not only the Madras Act as it was when it enacted the Pondicherry Act but also such amendment or amendments in the Madras Act which might be passed by the Madras State Legislature upto the time of commencement of the Act i.e. upto April 1, 1966. On the other hand, counsel for the respondent relied on the decision of a majority of judges (5:2) in the *Delhi Laws Act case* "that authorisation to select and apply future Provincial Laws was not invalid" as had been clearly brought out in the summary of the *Delhi Laws Act Case* attempted by Bose J. in *Rajnarain Singh's case*, [1955] 1 SCR 290. After a brief reference to the history of the doctrine of abdication contended for by the petitioner and a discussion of the *Delhi Laws Act Case*, Shelat J., with whom Subba Rao, CJ. and Mitter J. agreed, accepted the contention of the petitioner. He observed:

> "The question then is whether in extending the Madras Act in the manner and to the extent it did under sec. 2(1) of the Principal Act the Pondicherry legislature abdicated its legislative power in favour of the Madras legislature. It is manifest that the Assembly refused to perform its legislative function entrusted under the Act constituting it. It may be that a mere refusal may not amount to abdication if the legislature instead of going through the full formality of legislation applies its mind to an existing statute enacted by another legislature for another jurisdiction, adopts such an Act and enacts to extend it to the territory under its jurisdiction. In doing so, it may perhaps be said that it has laid down a policy to extend such an Act and directs the executive to apply and implement such an Act. But when it not only adopts such an Act but also provides that the Act applicable to its territory shall be the Act amended in future by the other legislature, there is nothing for it to predicate what the amended Act would be. Such a case would be clearly one of non-application of mind and one of refusal to discharge the function entrusted to it by the instrument constituting it. It is difficult to see how such a case is not one of abdication or effacement in favour of another legislature at least in regard to that particular matter.
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> But Mr. Setalvad contended that the validity of such legislation has been accepted in *Delhi Laws Act's* case and

particularly in the matter of heading No. 4 as summarised by Bose J. in *Raj Narain Singh's* case. In respect of that heading, the majority conclusion no doubt was that authorisation in favour of the executive to adopt laws passed by another legislature or legislatures including future laws would not be invalid. So far as that conclusion goes Mr. Setalvad is right. But as already stated, in arriving at that conclusion each learned Judge adopted a different reasoning. Whereas Patanjali Sastri and Das JJ. accepted the contention that the plenary legislative power includes power of delegation and held that since such a power means that the legislature can make laws in the manner it liked if it delegates that power short of an abdication there can be no objection. On the other hand, Fazal Ali J. upheld the laws on the ground that they contained a complete and precise policy and the legislation being thus conditional the question of excessive delegation did not arise. Mukherjea J. held that abdication need not be total but can be partial and even in respect of a particular matter and if so the impugned legislation would be bad. Bose J. expressed in frank language his displeasure at such legislation but accepted its validity on the ground of practice recognised over since *Burah's* case and thought that that practice was accepted by the Constitution makers and incorporated in the concept of legislative function. There was thus no unanimity as regards the principles upon which those laws were upheld.

All of them however appear to agree on one principle, viz., that where there is abdication of effacement the legislature concerned in truth and in fact acts contrary to the Instrument which constituted it and the statute in question would be void and still born."

(Underlining ours)

Bhargava, J. (with whom Shah J. agreed) did not consider it necessary to enter into this controversy as, according to them—and on this they dissented from the majority—even if it be held that the Pondicherry Act was bad for excessive delegation of powers when it was enacted and published, a subsequent amending Act of the Pondicherry Legislature had remedied the situation.

Sri Sibal contended that the Pondicherry Assembly, on a true

construction of s. 18 of the Government of Union Territories Act, 1963 was not a full fledged legislature but only a delegate of Parliament and, therefore, a delegation by it to the State Government amounted, in effect, to a sub-delegation which cannot be justified at all and that, therefore, *Shama Rao* is distinguishable. We do not think this contention is tenable in view of the observations made in *Burha's case*, [1878] 5 IA 178 and in the *Delhi Laws Act case* (supra) while repelling a similar contention about the status of a Dominion Legislature *vis-a-vis* the Parliament of the United Kingdom, and in the *Delhi Laws Act case*. Also that was not the basis on which *Shama Rao* was either argued before, or decided by, this Court. We may, therefore, turn to *Shama Rao's* interpretation of the *Delhi Laws Act case* and apply it here. We think we may accept the passage in Shelat J's judgment which we have underlined earlier as a correct enunciation by this Court of the Principle emerging from the *Delhi Laws Act case;* if we do so the only question that will remain to be considered will be whether s. 87 is a case of "abdication or effacement" and the answer to that question has been furnished, in the negative, by the *Delhi Laws Act* case itself in respect of identically worded provisions. Thus, *Shama Rao,* in effect, helps the respondents to sustain the validity of s. 87, though it is true that, on a different, if somewhat analogous, provision in the Pondicherry Act, their Lordships reached the contrary conclusion and held there was an "abdication or effacement."

But, these niceties apart, we think that s. 87 is quite valid even on the "policy and guideline" theory if one has proper regard to the context of the Act and the object and purpose sought to be achieved by s. 87 of the Act. The judicial decisions referred to above make it clear that it is not necessary that the legislature should "dot all the *i's* and cross all the *t's*" of its policy. It is sufficient if it gives the broadest indication of a general policy of the legislature. If we bear this in mind and have regard to the history of this type of legislation, there will be no difficulty at all. Section 87, like the provisions of Acts I, II and III, is a provision necessitated by changes resulting in territories coming under the legislative jurisdiction of the Centre. These are territories situated in the midst of contiguous territories which have a proper legislature. They are small territories falling under the legislature jurisdiction of Parliament which has hardly sufficient time to look after the details of all their legislative needs and requirements. To require or expect Parliament to legislate for them will entail a disproportionate pressure on its legislative schedule. It will also mean the unnecessary utilisation of the time of a large number of members of Parliament for, except the few (less than ten) members returned to Parliament from

A the Union Territory, none else is likely to be interested in such legislation. In such a situation, the most convenient course of legislating for them is the adaptation, *by extension*, of laws in force in other areas of the country. As Fazal Ali J. pointed out in the *Delhi Laws Act* case, it is not a power to make laws that is delegated but only a power to "transplant" laws already in force after having undergone scrutiny by B Parliament or one of the State Legislatures, and that too, without any material change. There is no dispute before us—and it has been unanimously held in all the decisions—that the power to make modifications and restrictions in a clause of this type is a very limited power, which permits only changes that the different context requires and that changes in substance. There is certainly no power of modification by C way of repeal or amendment as is available under s. 89.

Sri Swarup contends that the vice in the provision lies (a) in the choice it has left to the Central Government of one among several laws that may be in force in various areas and (b) in the power it has given to extend future laws as well. A power to exercise such wide power, he D says, cannot be described as a ministerial power; it is essential legislative power, according to him. It is true that if one were to read the section in the abstract and in its broadest connotation, it conjures up the possibilities of the executive picking up at its fancy at any time any law that may exist in any part of India for extension to Chandigarh without any particular rhyme or reason. The force of Sri Swarup's E objection on this aspect has been picturesquely brought out by Mahajan J. in a passage in the *Delhi Laws Act case:*

> "The choice to select any enactment in force in any province at the date of such notification clearly shows that the legislature declared no principles or policies as regards the F law to be made on any subject. It may be pointed out that under the Act of 1935 different provinces had the exclusive power of laying down their policies in respect of subjects within their own legislative field. What policy was to be adopted for Delhi, whether that adopted in the province of Punjab or of Bombay, was left to the Central Government. G Illustratively, the mischief of such law-making may be pointed out with reference to what happened in pursuance of this section in Ajmer-Marwara. The Bombay Agricultural Debtors' Relief Act, 1947, has been extended under cover of this section to Ajmer-Marwara and under the power of modification, by amending the definition of the H word 'debtor' the whole policy of the Bombay Act has been

altered. Under the Bombay Act a person is a debtor who is indebted and whose annual income from sources other than agricultural and manly labour does not exceed 33 per cent of his total annual income or does not exceed Rs.500, whichever is greater. In the modified statute "debtor" means an agriculturist who owes a debt, and "agriculturist" means a person who earns his livelihood by agriculture and whose income from such source exceeds 66 per cent of his total income. The outside limit of Rs.500 is removed. The exercise of this power amounts to making a new law by a body which was not in the contemplation of the Constitution and was not authorized to enact any laws. Shortly stated, the question is, could the Indian legislature under the Act of 1935 enact that the executive could extend to Delhi laws that may be made hereinafter by a legislature in Timbuctoo or Soviet Russia with modifications. The answer would be in the negative because the policy of those laws could never be determined by the law making body entrusted with making laws for Delhi. The Provincial legislatures in India under the Constitution Act of 1935 *qua* Delhi constitutionally stood on no better footing than the legislatures of Timbuctoo and Soviet Russia though geographically and politically they were in a different situation."

But, with respect, we think, we should not look at the provision in the present context from that angle. We should here have regard to the object of the provision and the purpose it was intended to achieve and, in the historical perspective we have set out, there is no vice in the power conferred.

So far as the first aspect referred by Sri Swarup is concerned, the provision only confers a power on the executive to determine, having regard to the local conditions prevalent in the Union Territory, which one of several laws, all approved by one or the other of the legislatures in the country, will be the most suited to Chandigarh. Thus viewed, it would fall under one of the permissible categories of delegation referred to at p. 814 in the *Delhi Laws Act* case and extracted by us earlier and, if so, it is not really an unguided or arbitrary power. There could have been no objection to the legislation if it had provided that the laws of one of the contiguous States (say Punjab) should be extended to Chandigarh. But such a provision would have been totally inadequate to meet the situation for two reasons. There may be more than

A one law in force on a subject in the contiguous States—say one in Punjab, one in Pepsu and one in Himachal Pradesh etc.—and Parliament was anxious that Chandigarh should have the benefit of that one of them which would most adequately meet the needs of the situation in that territory. Or, again, there may be no existing law on a particular subject in any of the contiguous areas which is why the power had B to include the power of extending the laws of any State in India. While, in a very strict sense, this may involve a choice, it is in fact and in the general run of cases, only a decision on suitability for adaptation rather than choice of a policy. It is a delegation, not of policy, but of matters of detail for a meticulous appraisal of which Parliament has no time. Even if we assume that this involves a choice of policy, the restriction of such policy to one that is approved by Parliament or a C State Legislature constitutes a sufficient declaration of guideline within the meaning, of the "policy-guideline" theory.

The second aspect referred to by Sri Swarup, again, is, in the context, not a sign of "abdication" but is only a necessary enabling D power. Once it is held that the delegation of a power to extend a present existing law is justified, a power to extend future laws is a necessary corollary. Here again, its validity may be tested by considering what the position would have been if the section had provided only for the extension of the laws in a contiguous territory, say Punjab. As mentioned earlier, a power to extend existing statutes in Punjab could E clearly have been delegated. If Parliament formulated such a policy as it had no time to apply its mind to the existing law initially to be adapted, it could hardly find time to consider the amendments from time to time engrafted on it in the state of its origin. Hence once a policy of extension of Punjab laws is clear and permissible it would seem only natural as a necessary corollary that the executive should be F permitted to extend future amendments to those laws as well. The power to extend any future law has to be considered in the above context and not only could be, but also has to be, conferred for the same reasons as justify the conferment of a power to extend a present contiguous law. Mukherjea J. in the *Delhi Laws Act* case has touched upon this issue. As pointed out by him, the question of validity of the G delegation of a power to extend any future law, is not free from difficulty. If the provision is considered in the abstract and contrued on the basis of its fullest possible ambit, it may be difficult to sustain it. But if it is construed and judged in the historical context of the legislation, the needs of the situation and a reasonably practical appraisal of the extent of its intended application, there can be no doubt that it con- H tains a sufficient indication of broad policy to sustain the validity of the

extent of delegation involved in s. 87. We may, in this context, repeat again that courts, in the decided cases, do not envisage a meticulous enunciation of a policy in all its details. They are satisfied even if they can discern even faint glimmerings of one from the object and scheme of the legislation. A

For the reasons discussed above, we reject the contentions of the petitioners challenging the constitutional validity of s. 87. B

We now turn to the second contention of the petitioners based on the assumption of s. 87 being valid. The point made is that s. 87, on its proper construction, permits the extension of the laws of another State to Chandigarh only so long as there is a 'vacuum" of laws, on any particular subject, within the Union Territory but that, once Parliament itself steps in and makes laws for the territory, it has assumed legislative responsibilities in respect of that subject and a "transplantation" of laws from elsewhere by extension is neither necessary nor valid, Sri Gujral submits that the *raison d'etre* of s. 87 is that, as Parliament may not have enough time to attend to the legislative needs of the new territory brought into its fold, it is necessary to provide a machinery by which some laws could enforced in the territory. But here, as early as 1974, Parliament applied its mind and legislated, in respect of landlord-tenant matters, for the Union Territory and having done this, it is for Parliament and Parliament alone to legislate on the subject thereafter. Indeed President issued an ordinance in 1976 and Parliament also amended the law in 1982 in some other respects indicating that Parliament was in full *seisin* of the matter. This is one facet of the objection. The other facet is that, by purporting to extend, by an executive notification, the provisions of the 1985 Act to Chandigarh, what the Central Government has really done is to modify or amend an existing Parliamentary law (the 1974 Act) operating in the State already. Conceding, for purposes of argument, that, had the 1949 Act been extended to Chandigarh in 1974 by a notification under s. 87, it might have been open to the Government, by another notification under s. 87, to extend the 1985 Act also to the Union Territory, counsel contends that it was impermissible to allow the Central Government to issue a notification under s. 87 which will have the effect of amending or modifying a law of Parliament already in force in the territory. A notification could amend a notification but not a statute, he says. In support of this part of the argument, counsel strongly relies on the decision, of a majority of Judges in the *Delhi Laws Act* case, that the second part of s. 2 of Act III considered by them was *ultra vires*. He submits that, if even a specific provision in a law could C D E F G H

not validly permit a notification of extension to amend or repeal existing laws of the territory in question, a notification under s. 87 which advisedly omits any reference to such an enabling power (enacted in Act III and declared *ultra vires* by this court) could hardly be on a stronger footing. On this construction of s. 87, counsel contends, the notification dated 15.12.86 has exceeded the purview of s. 87 and is, therefore *ultra vires*.

Turning, therefore, to the judgments in the *Delhi Laws Act* case on which counsel strongly relies in support of his contentions, we may observe at the outset that the judgments of Kania CJ. and Patanjali Sastri J. are not helpful, as according to Kania CJ, the power of delegation was altogether bad except in so far as it permitted an extension of laws made by the Central Legislature and, according to Sastri J. extensive delegation of powers was valid. Fazal Ali J., in upholding its validity, observed thus in regard to the second part of s. 2 of Act III:

> "I will now deal with section 2 of Part C States (Laws) Act, 1950, in so far as it gives power to the Central Government to make a provision in the enactment extended under the Act for the repeal or amendment of any corresponding law which is for the time being applicable to the Part C State concerned. No doubt this power is a far-reaching and unusual one, but, on a careful analysis, it will be found to be only a concomitant of the power of transplantation and modification. If a new law is to be made applicable, it may have to replace some existing law which may have become out of date or ceased to serve any useful purpose, and the agency which is apply the new law must be in a position to say that the old law would cease to apply. The nearest parallel that I can find to this provision, is to be found in the Church of England Assembly (Powers) Act, 1919. By that Act, the Church Assembly is empowered to propose legislation touching matters concerning the Church of England, and the legislation proposed may extend to the repeal or amendment of Acts of Parliament including the Church Assembly Act itself. It should however be noticed that it is not until Parliament itself gives it legislative force on an affirmative address of each House that the measure is converted into legislation. There is thus no real analogy between that Act and the Act before us. However, the provision has to be upheld, because, though it goes to the farthest limits, it is difficult to hold that it was beyond the

powers of a legislature which is supreme in its own field, and all we can say is what Lord Hewart said in *Kind* v. *Minister of Health*, [1927] 2 KB 229, namely, that the particular Act may be regarded as "indicating the high water-mark of legislative provisions of this character," and that, unless the legislature acts with restraint, a stage may be reached when legislation may amount to abdication of legislative powers."

Mahajan J. had this to say:

"For reasons given for answering questions 1 and 2 that the enactments mentioned therein are *ultra vires* the Constitution in the particulars stated, this question is also answered similarly. It might, however, be observed that in this case express power to repeal or amend laws already applicable in Part C States has been conferred on the Central Government. Power to repeal or amend laws is a power which can only be exercised by an authority that has the power to enact laws. It is a power co-ordinate and co-extensive with the power of the legislature itself. In bestowing on the Central Government and clothing it with the same capacity as is possessed by the legislature itself the Parliament has acted unconstitutionally."

The observations of Mukherjea J. are very relevant from the point of counsel for the petitioners. His Lordship said:

"It will be noticed that the powers conferred by this section upon the Central Government are far in excess of those conferred by the other two legislative provisions, at least in accordance with the interpretation which I have attempted to put upon them. As has been stated already, it is quite an intelligible policy that so long as a proper legislative machinery is not set up in a particular area, the Parliament might empower an executive authority to introduce laws validly passed by a competent legislature and actually in force in other parts of the country to such area, with such modifications and restrictions as the authority thinks proper, the modifications being limited to local adjustments or changes of a minor character. But this presupposes that there is no existing law on that particular subject actually in force in that territory. If any such law

A exists and power is given to repeal or abrogate such laws either in whole or in part and substitute in place of the same other laws which are in force in other areas, it would certainly amount to an unwarrantable delegation of legislative powers. To repeal or abrogate an existing laws is the exercise of an essential legislative power, and the policy
B behind such acts must be the policy of the legislature itself. If the legislature invests the executive with the power to determine as to which of the laws in force in a particular territory are useful or proper and if it is given to that authority to replace any of them by laws brought from other provinces with such modification as it thinks proper, that would be to invest the executive with the determina-
C tion of the entire legislative policy and not merely of carrying out a policy which the legislature has already laid down. Thus the power of extension which is contemplated by section 2 of Part C States (Laws) Act, includes the power of *introducing laws which may be in actual conflict with the*
D *laws validly established and already in operation in that territory*. This shows how the practice, which was adopted during the early British period as an expedient and possibly harmless measure with the object of providing laws for a newly acquired territory or backward area till it grew up into a full fledged administrative and political unit, is being
E resorted to in later times for no other purpose that that of vesting almost unrestricted legislative powers with regard to certain areas in the executive government. The executive government is given the authority to alter, repeal or amend any laws in existence in that areas under the guise of bringing in laws there which are valid in other parts of
F India. This, in my opinion, is an unwarrantable delegation of legislative duties and cannot be permitted. The last portion of section 2 of Part C States (Laws) Act, is therefore, *ultra vires* the powers of the Parliament as being a delegation of essential legislative powers in favour of a body not competent to exercise it and to that extent the legislation
G must be held to be void. This portion is however severable; and so the entire section need not be declared invalid."

(Emphasis added)

Bose J., again, made certain observations which are strongly relied upon by counsel. His Lordship observed:

H "I see no reason for extending the scope of legislative delegation

beyond the confines which have been hallowed for so long. Had it not been for the fact that this sort of practice was blessed by the Privy Council as far back as 1878 and has been endorsed in a series of decisions ever since, and had it not been for the practical necessities of the case, I would have held all three Acts *ultra vires*. But, so far as the latter portion of the third Act is concerned, no case was cited in which the right to repeal the existing laws of the land and substitute others for them has been upheld. That was tried in a South African case, *Sir John Gorden Sprigg.* v. *Sigcau,* [1897] AC 238, but the Privy Council held it could not be done, not indeed on any ground which is material here but that is the only case I know where the attempt was made and the right litigated. It is one think to fill a void or partial vacuum. *Quite another to throw out existing laws enacted by a competent authority.* It is bad enough to my mind to hold that the first is not a delegation of legislative power. But as that has been held by an authority which it is impossible now to question so far as the past is concerned, I bow to its wisdom. But as to the future, I feel that a body which has been entrusted with the powers of legislation should legislate and not leave the decision of important matters of principle to other minds. I am therefore of opinion that the power upheld by the *The Queen* v. *Burah* does not extend as far as the latter portion of section 2 of the Part C States (Laws) Act of 1950 endeavours to carry it."

(Emphasis added)

In support of his "vacuum" theory, counsel also refers to an instance of legislative practice referred to in *Kapoor's* case [1989] 1 S.C.C. 561. Counsel points out there was a central rent law applicable to all cantonments in India, being Act 10 of 1952. In 1957, Parliament decided that the rent law in force in the rest of a State should be allowed to be extended to the cantonment areas in State as well by issue of Government notification, and enacted Act 46 of 1957 for the purpose. However, no such extension under s. 3 of the Act 46 of 1957 was notified for the State of U.P. until Parliament, by passing Act 68 of 1971, statutorily clarified that:

> "On and from the date on which the United Provinces (Temporary) Control of Rent & Eviction Act, 1947, is extended by notification under section 3 of the Cantonments (Extention of Rent Control Laws) Act, 1957 to the Cantonments in Uttar Pradesh, the Uttar Pradesh Cantonments (Control of Rent & Eviction) Act 1952 (Act 10 of 1952) shall stand repealed."

In other words, though extension of local laws to cantonments by notification was allowed, Parliament provided for the simultaneous creation of a "vacuum" in the cantonment area by repeal of the 1952 Act which could be occupied by the extended law. Counsel emphasises this aspect to show that an extension by notification can be allowed to fill a void but cannot be allowed to knock against a superior Parliamentary enactment already in existence.

There is certainly a good deal of force in these arguments but we think that they proceed on an incorrect view of the effect of the notification impugned in the present case. We might have been inclined to accept the submissions of the learned counsel had the effect of the notification been to extend a law which is in "actual conflict" with any parliamentary enactment or which has the effect of "throwing out" any existing law in the Union Territory. To borrow an expression used in an analogous context, we would have considered the validity of the extension doubtful had the extended provisions been repugnant to an Act of Parliament in force in the Union Territory. So long as that is not the effect or result, we think, there is no reason to construe the scope of s. 87 in the restricted manner suggested by counsel. It is no doubt true that s. 87 permits an extension because there is no law in the Union Territory in relation to a particular subject and Parliament has not the requisite time to attend to the matter because of its preoccupations. But this purpose does not require for its validity that there should be no existing law of Parliament at all on a subject. Again the concept of "subject" for the purposes of this argument is also an elastic one the precise scope of which cannot be defined. The concept of vacuum is as much relevant to a case where there is absence of a particular provision in an existing law as to a case where there is no existing law at all in the Union Territory on a subject. For instance, if Parliament had not enacted the 1974 Act but had only enacted an extension of the Transfer of Property Act to Chandigarh, could it have been said that a subsequent notification cannot extend the provisions of the 1949 Act to Chandigarh because the subject of leases is governed by the Transfer of Property Act which has been already extended and there is, therefore, no "vacuum" left which could be filled in by such extension? Again, suppose, initially, a Rent Act is extended by Parliament which does not contain a provision regarding one of the grounds on which a landlord can seek eviction—say, one enabling the owner to get back his house for reoccupation—and then the Government thinks that another enactment containing such a provision may also be extended, can it not be plausibly said that the latter is a matter on which there is no legislation enacted in the territory and that the extension of the latter enactment only fills up a void or vacancy? Again, suppose the provisions of a general code like, say, the Code of Civil Procedure are extended to the Union Territory, should be construe s. 87 so as to preclude the extension of a later amendment to one of the rules to one of the Orders of the C.P.C. merely on the ground that it will have the effect of varying or amending an existing law? We think it would not be correct to thus unduly restrict the scope of a provision like s. 87. The better way to put the principle, we think, is to

say that the extension of an enactment which makes additions to the existing law would also be permissible under s. 87 so long as it does not, expressly or impliedly, repeal or conflict with, or is not repugnant to, an already existing law. In this context, reference can usefully be made to the observations in *Hari Shanker Bagla* [1955] 1 SCR 380 at 391, which seem to countenance the "by-passing" of an existing law by a piece of delegated legislation and to draw the line only at its attempt to repeal the existing law, expressly or by necessary implication. In a sense, no doubt, any addition, however small, does amend or vary the existing law but so long as it does not really detract from or conflict with it, there is no reason why it should not stand alongside the existing law. In our view s. 87 should be interpreted constructively so as to permit its object being achieved rather than in a manner that will detract from its efficacy or purpose. We may also note, incidentally, that in legislative practice also, such successive changes have been allowed to stand together. *Lachmi Narain* v. *Union of India,* [1976] 2 SCR 785 narrates how the Bengal Finance (Sales Tax) Act, 1941 extended to Delhi under Act III was subsequently amended by Parliament Acts of 1956 and 1959 but was also sought to be modified by various notifications from time to time. These notifications were challenged on the ground that the power to extend by notification could be exercised only once and that the impugned notification did not merely extend but also effected modifications of a substantial nature in the Act sought to be extended. No contention was, however, raised that after the intervention of Parliament in 1956 and 1959 there could have been no extension of the Bengal Act as it would have the effect of adding to or varying the Parliamentary legislation apparently because they could stand side by side with each other. We, therefore, think that since the extension of the 1985 Act only adds provisions in respect of aspects not covered by the 1974 Act and in a manner not inconsistent therewith, the impugned, notification is quite valid and not liable to be struck down.

We may now briefly dispose of certain minor aspects of the above contentions which were debated before us:

1. It was urged that the provisions of the 1985 Act extended to Chandigarh cannot stand independantly and make sense only if read along with and as supplementing the provisions of the 1949 Act already reenacted by the 1974 Act and, therefore, amend or modify the 1974 Act. This is true but it does not affect our line of reasoning indicated above.

2. There was considerable argument before us as to whether the modifications introduced by the 1985 Act in the 1949 Act, as reenacted by the 1974 Act, are minor "modifications or restrictions" or incorporate substantial changes in the scheme of the pre-existing law. Counsel for the petitioners contended that the changes introduced by the 1985 Act were substantial and far-reaching. On the other hand counsel for the respondent contended to the contrary. Sri Sehgal, appearing for one of the landlords submitted that the Act already contained provisions enabling any owner to get back his premises when he needed it for his occupation—S. 13(3)(a)(i) and (iv)—and a special provision enabling an Army Officer to expeditiously recover possession of his premises when he needed it for his family—S. 13(3)(a)(i-a) and (c)—and that the provision sought to be introduced by the 1985 Act was only a natural and logical extension thereof. Counsel for the landlord in SLP 9217 of 1988 submitted that it was only a procedural change that the 1985 Act introduced, relying on certain observations made by this Court in *Kewal Singh* v. *Lajwanti,* [1980] 1 SCR 854. All this discussion is wholly irrelevant on our line of reasoning. As we have pointed out, in construing the scope of a law extended under s. 87 *qua* an existing law, the question is not whether there are changes or not, the question is only, are they inconsistent with, in conflict with or repugnant to, the scheme of the existing law and we have answered this question in the nagative. The question of "modifications or restrictions" will loom large only in construing the scope of the notification *qua* the law extended by it. In *Lachmi Narain* [1976] 2 SCR 785 (at p. 801-2) and other cases it has been held that such a notification, while extending a law, can make only such "modifications and restrictions" in the law extended as are of an incidental, ancillary or subservient nature and as do not involve substantial deviations therefrom. Here, it is common ground that the 1985 Act has been extended as it is, with only very minor modifications and, hence, it is unnecessary to consider the question debated.

3. The reference to the legislative precedent referred to in *Kapoor's* case does not help us to determine the issue in the present case. Sri Gujral pointed out that, in that case, Parliament considered it necessary to repeal an Act of Parliament (10 of 1952) and thus create a vacuum before providing for extension of a State law to the cantonment. Central Act 10 of 1952 in that case, was a detailed enactment and the State law extended under s. 3 of the Act 46 of 1957 could not have stood alone with it. It was, therefore, decided by Parliament that the Central Act should stand repealed. Here, on the other hand, we have attempted to show that both sets of provisions can stand together

and effectively supplement 'each other.

Sri Swarup pointed out that, in *Kapoor's* case, the words "on the date of the notification" were omitted with retrospective effect. This also does not help the petitioners. For one thing, the omission of those words enlarges the power of notification and made possible the issue of a notification to extend the State law along with its future amendments. But that apart, the words "on the date of the notification" are present in s. 87 and authorise the extension of the law in force in Punjab, as on 15.12.1986, to Chandigarh.

4. There was some discussion before us on the basis of the observations in *Lachmi Narain & Ors.* v. *Union of India & Ors.*, [1976] 2 SCR 785, as to whether there could be successive notifications under s. 87. But this question, which was answered in the affirmative in *Kapoor's* case (supra), does not arise here, as there is only one notification under s. 87.

5. Learned counsel submitted that the observations of the High Court in para 17 and 26 of the judgment under appeal are not helpful as they refer to extension of laws made under the provisions of Acts I, II and III which had been held valid in the *Delhi Laws Act* case. This is correct but, as we have pointed out earlier. s. 87 only continued the pattern of Acts I, II and III after being assured by the Supreme Court that there was nothing wrong with it. This is a relevant aspect which has to be kept in mind in considering the issues before us.

6. Learned counsel criticised the observations made by the High Court in para 27 of the judgment. The passage referred to seems to echo the observations made in certain decisions of this Court (vide, for e.g. Mukherjea CJ) in *Rai Sahab Ram Jawaya Kapur* v. *State,* [1955] 2 SCR 225 at p. 237 and Hedge J. in *Sitaram Bishamber Dayal,* [1972] 2 SCR 141 at p. 143 cited, with apparent approval, in *Roy* v. *Union,* [1982] 2 SCR 272 at p. 317. They should not be understood as equating the exercise of legislative power by Parliament and the Executive.

7. Both sides sought to take advantage of the history of the legislation in this case. As stated earlier, the main contention of counsel for the petitioners was that, by enacting the 1974 Act and the 1982 Act, Parliament had filled in the "vacuum" which could no longer be penetrated by extension of laws from other parts of the country on the subject. In addition they point out that the 1976 Ordinance making the amendments which are now being sought to be

A extended was allowed to lapse and that an incorporation of these amendments was not considered necessary when the 1982 Act was passed. These two circumstances show, according to them, that an extension of the provisions of the 1985 Act was contrary to the clear intention of Parliament. On the contrary, counsel for the State submitted that the passing of the 1974 Act and the promulgation of the B ordinance show that it was the policy of the Parliament to extend the provisions of the 1949 Act and, in particular, the provisions now extended, to Chandigarh as well. He further submitted that the ordinance could not be made into an Act because of the intervention of the emergency and that the omission to convert the ordinance into an Act and to insert the provisions of the ordinance into the 1982 Act really C demonstrate how Parliament is unable to keep track of legislation necessary for a Union Territory. We do not wish to enter into this controversy for our present purposes as we do not think that any clear inference can be drawn one way or the other from these circumstances. It is also not necessary to consider these developments in the view we have taken that there can be no objection to extension of provisions D which do not conflict with the existing law in the Union Territory.

8. Sri Swarup raised a point that if s. 87 is read as empowering the extension of any law at any time, s. 89 which prescribes a maximum time limit of two years within which to adapt existing laws for their application to Chandigarh would become redundant. This argument E overlooks a very crucial difference between ss. 87 and 89. This is that, within the period of two years mentioned in s. 89, the Central Government can, while adapting pre-existing laws make any changes therein, including changes by way of repeal or amendment. But s. 87 though capable of enforcement indefinitely, confers a more limited power. It can be invoked only to extend laws already in existence to the Union F Territory and cannot make any substantial changes therein. The power under s. 89 is limited in time but extensive in scope while under s. 87 the power is indefinite in point of duration but very much more restricted in its scope.

The above discussions dispose of all the contentions urged before G us. For the reasons set out, we are of opinion that the conclusion arrived at by the Punjab and Haryana High Court was the correct one. All these petitions and appeals fail and are dismissed and the *rules nisi* discharged but, in the circumstances, we direct each party to bear his/its own costs.

H P.S.S. Appeals & petitions dismissed.